

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19493
Docket Number CL-19553

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6965) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1 to 7-A-1, inclusive, when it held out of service S. C. Cancilla, Baggage Department, Pennsylvania Station, Pittsburgh, Pennsylvania, beginning December 5, 1967, and later imposed discipline of dismissal upon S. C. Cancilla, effective May 14, 1968.

(b) Discipline of dismissal from service imposed on S. C. Cancilla be removed from his service record.

(c) S. C. Cancilla be compensated in accordance with Rule 7-A-1(d) for all monetary loss sustained. (Docket 2472)

OPINION OF BOARD: The claimant had been an employe of the Carrier for some thirty-one years and immediately prior to October 30, 1967 he occupied official position of Passenger Agent at Pittsburgh, Pennsylvania.

On October 30, 1967, claimant was relieved from the position of Passenger Agent. He attempted to exercise his seniority as Assistant Foreman in the Baggage Department at Pennsylvania Station on December 5, 1967, at which time he was advised in writing that he was being held out of service pending investigation and trial on four charges. On January 4, 1968 he was notified to attend a trial on January 9 on the following charges:

"1. Responsible for payment of false time cards to Eleanor R. Kasarda, Station Baggage man, from June 10, 1966, to January 7, 1967, and various other dates in the year 1967, while employed in the Baggage Room, Pittsburgh, Pa., while in charge as Passenger Agent.

2. Improper reporting of personal injury of Eleanor R. Kasarda, Station Baggage man, injured on June 9, 1966, while working in the U. S. Post Office Building, Track Level, Pittsburgh, Pa., while in charge as Passenger Agent.

3. Improper reporting of personal injury of Joseph Nizankiewicz, Station Baggage man, injured on May 7, 1967, while on

"duty at the Pennsylvania Railroad Station, Pittsburgh, Pa., while in charge as Passenger Agent.

4. Improper reporting of personal injury of C. J. Spartzak, Station Baggage man, injured on September 9, 1967, while on duty at the Pennsylvania Railroad Station, Pittsburgh, Pa., while in charge as Passenger Agent.

5. Payment of wages to N. J. Flocker, Station Baggage man, during the period from February 14, 1962 to June 2, 1967, inclusive, when he did not perform service for the Pennsylvania Railroad.

6. Failed to properly supervise administration of February 7, 1965 Agreement resulting in over payment of protected rate adjustment in the amount of approximately \$10,000.00 for S. L. Powell, J. L. Gable and thirteen (13) other employees."

The trial scheduled to begin on January 9, 1968, was postponed and begun on January 16, 1968, and was concluded on April 29, 1968. A copy of the transcript, consisting of over 1100 pages, has been made a part of the record. On May 14, 1968, claimant was notified of his dismissal from the service on the basis of the first five charges.

While the manner in which the trial was conducted may not be considered exemplary, from either the Carrier's or Organization's standpoint, and appears to have been unduly prolonged, the claimant and his representative were permitted to cross-examine witnesses and to present any witnesses that they desired. We, therefore, do not find that claimant was denied any of his substantive rights by the manner in which the trial was conducted. Neither is there any basis for the contention that the Notice of Trial was improper and prohibited the claimant from presenting a proper defense.

As claimant held seniority under the Clerks' Agreement and was attempting to exercise seniority under that Agreement, it was proper for the Carrier to proceed under Rule 6 of the Agreement. It can not properly be contended that the Carrier violated the Agreement by affording the claimant the procedural protection contained in Rule 6.

It is well settled by prior awards of this Board that in disciplinary proceedings the Board will not weigh evidence, attempt to resolve conflicts therein, pass upon the credibility of witnesses, or substitute its judgment for that of the Carrier where there is substantial evidence to support the charges. Applying these principles to the present dispute, we find that there was substantial evidence, even though disputed, to support the five charges on which the claimant was dismissed from the service. Even though this Referee is reluctant to sustain dismissal of an employe with years of

service such as the claimant had, it cannot properly be said that on the basis of the record the penalty was excessive, or that the actions of the Carrier were arbitrary, capricious or in bad faith. We will, therefore, deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.