

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19637
Docket Number CL-19498

Thomas L. Hayes, 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-6994)
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 imposed discipline of dismissal upon **R. Small**, Extra Baggage man, Baggage Department, Pennsylvania Station, Baltimore, Maryland, effective August 15, 1967.

(b) R. Small's record be cleared of the charges brought against him.

(c) R. Small be compensated in accordance with Rule **7-A-1(d)** for all monetary loss sustained. (Docket 2456)

OPINION OF BOARD: The Claimant, an Extra Baggage man **at** Pennsylvania **Station**, Baltimore, Maryland was notified to attend a trial at the Baltimore Ticket Office, Pennsylvania Station, on Monday, August 14, 1967, at **8:30 A.M.** in connection with the following charge:

"Failure to report for duty as Baggage-n, Pennsylvania Station, Baltimore, Maryland, 4:00 P.M. and reporting for duty late as **Baggageman**, Pennsylvania Station, Baltimore, Maryland, 12:00 P.M., August 5, 1967."

Neither the Claimant nor his representative attended the trial which was held as scheduled on August 14, 1967 and no one appeared at the trial to move for a delay or postponement thereof.

The Claimant was found guilty of the charge and was dismissed from service, previous discipline record having been considered.

The Organization argues that Claimant was dismissed from service without a fair and impartial trial because he was tried in absentia. Claimant eventually showed up for the trial one hour late but by that time it was over. Claimant's representative did not show up apparently **because** he was waiting for Claimant.

The Board is of the view that Claimant ought to have been present at the time of the trial, or, at the very least, should have requested a union official to appear at the trial on his behalf requesting a delay or postponement.

While Claimant alleges that he spoke to a female in the Ticket Agent's office saying that he would be late, there is nothing in the record which gives the name of the woman or the time of the call. Nor is there any independent evidence in the record verifying the allegation of Claimant that the call was made.

In the light of all the circumstances, we are compelled to hold that Claimant was **not** denied a fair and impartial trial.

The facts out of which the charges in this case arose are set forth in the paragraphs below.

The record indicates that Claimant was supposed to work from 4 P.M. to 12 midnight on August 5, 1967, but that he did not show up for that assignment. He called in between 3 P.M. and 4 P.M. saying that he was waiting for the bus but nothing further was heard from him until **6:30** P.M. nor was his absence ever explained. At **6:30** P.M. he asked permission to report for work at midnight and **was** given permission to do so. Claimant, however, did not report at midnight **and** was not located by **his** foreman until **12:50** A.M. at which time he was still **in** the locker room.

The Board is persuaded that Claimant is guilty of the charge levied against him and, when Claimant appealed the discipline imposed upon him, he admitted his guilt and requested leniency, as did Local Chairman **E. D. Baylor**.

The Organization has argued to this Board that the discipline assessed was too severe.

The General Rule is that the quantum of discipline imposed in a particular case by Carrier should not be set aside unless Carrier was unreasonable, **arbitrary** or capricious or acted in bad faith. In the instant case, Claimant's record is far from good. He has been disciplined on ten previous occasions, three of which involved offenses similar to those we are concerned with in this case.

In view of the foregoing, we find the claim to be without merit and it is denied.

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

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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 27th day of February 1973.