

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19747
Docket Number CL-19723

Irwin M. **Lieberman**, 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 (CL-7084)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Commissary Clerk, Walter N. Wright, Sleeping and Parlor Car Service Department, Washington Terminal, Washington, D. C.

(b) **Claimant** Walter N. Wrights' record be cleared of the charges brought against him on December 8, 1970.

(c) Claimant Walter N. Wright be restored to service with **seniority** and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at **6%** per annum, compounded daily.

OPINION OF BOARD: On December 3, 1970, Claimant **was** working as a **Commissary** Clerk in the Dining Car Department at the Washington Terminal of the Carrier. On December 8, 1970 **Claimant was** issued a Notice of Trial or Investigation on the following basis:

"Misappropriating Company supplies when you placed 24 individual bottles of Scotch whiskey in public locker #1179, Union Station, Washington, D. C. the morning of **December** 3, 1970."

Following **an** investigation held on December 17, 1970, Claimant **was** dismissed from service by **a** notice on December 30, 1970.

The crux of the **matter** is whether there **was** substantial evidence **in** support of Carrier's conclusion **of** the guilt of Claimant. The issue turns on the identification of Claimant - there being credible evidence that a bag containing the whiskey (**which** had company markings on the label) **was** observed being placed in the locker in question. The transcript of the investigation reveals that a company patrolman made a descriptive identification of Claimant the morning of the incident and a specific identification at the hearing. This is countered by Claimant's testimony in which he denies **any** participation in the affair. Without regard to arguments raised by both Petitioner and Carrier

with respect to evidence which could have but was not introduced into the record, we **have** here a credibility question. As we have said on **many** prior occasions we cannot resolve credibility issues; this province is reserved to the Carrier. Once the patrolman's testimony is credited and Claimant's **is** not, the weight of evidence clearly supports the Carrier's conclusion of the guilt of the Claimant. The guilt of the Claimant having been established, **we** do not find the penalty inappropriate.

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 Employee involved in this dispute are respectively Carrier and Employee 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 11th day of May 1973.