

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD & VISION

Award Number 19793
Docket Number CL-19692

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**
PARTIES TO DISPUTE: (**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-7069)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Joseph Gill, **Truckman** Laborer, Dining, Sleeping and Parlor Car Service Department, Long Island City, New York.

(b) Claimant Joseph **Gill's** record be cleared of the charges brought against him on October 30, 1970.

(c) Claimant Joseph Gill 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: The Organization contends **that** Mr. **Gill** was improperly disciplined when he was **discharged for his alleged failure to** assist in loading food carriers on Train 107, as **directed by** his supervisor. At the hearing Mr. Gill denied that he had been given the alleged instructions by his supervisor.

The record on the property shows that the Carrier's witnesses claim that they discussed the assignment with Gill who said that the assignment was not "his job". Such a claim that an **assignment** is not within the scope of his duties is **grievable**, but there is no evidence in the record that the claimant ever grieved.

This Board has repeatedly held that it will not substitute Board **judg-**ment for the Carrier's assessment of discipline **if** the Carrier's action was not an abuse of its discretion. The Organization's request for leniency for "en who are on a guaranteed job is inappropriate for this Board to consider, absent a showing that the Carrier's action was arbitrary, capricious, vindictive or excessive. There is no probative evidence in the record that such was the case.

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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;

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

The Agreement has not been violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1973.