

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19930
Docket Number CL-20121

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and **Jervis Langdon, Jr.**,
(Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (C&7264)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of ten days actual suspension on T. G. Pfalzgraf, Clerk, Rose Lake Yard, East St. **Louis**, Illinois, Southern Region.

(b) Claimant T. G. **Pfalzgraf's** record be cleared of the charges brought against him.

(c) Claimant T. G. Pfalzgraf be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant, a Classification Clerk, was charged with misclassifying a car, resulting in delay and a dissatisfied customer. After an investigation, he was found guilty and assessed a ten day suspension.

Petitioner raises the issue that no charge was made against Claimant, and that the investigative hearing was "an investigation to determine responsibility" and not a trial. We shall not consider this contention since it was not raised on the property.

Petitioner claims that the investigation did not support the Carrier's conclusion of guilt of Claimant, while the Carrier **argues** that the record of the investigation clearly demonstrates such guilt. An examination of the transcript reveals it to be unique in certain respects; it was extremely short and the sole witness was Claimant. Further, at the hearing, Claimant while admitting that he had classified the car in question, after a passing check, did not indicate that he had made an error. While not remembering some of the detail on the day in question, Claimant denied that the waybill presented at the hearing was the document he had used in classifying the car. The Carrier presented no contradictory evidence • and in fact presented no affirmative case of its own. It is difficult to understand how a conclusion of guilt could be reached in the absence of at least a credibility finding • which would not be possible unless there was a prejudicial presumption of guilt prior to the hearing.

In this case there was evidently a mistake made by one or more employees - including a misclassification of the car in question. The Carrier, however, has completely failed to support its findings of guilt on the part of Claimant; it has not presented evidence at the hearing to lend credence to its conclusion. We shall sustain 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 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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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