

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20113
Docket Number CIX-20291

Dana E. Eischen, Referee

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

PARTIES TO DISPUTE: (
(**REA** Express, Inc.

STATEMENT OF CLAIM: Claim of the District **Committee** of the Brotherhood (Case No. 155) that:

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967 was violated by R.E.A. Express at Philadelphia, **Penna.** when on June 18, 1971, George A. Smith, a full-time officer of Local No. 2151, B.R.A.C., was dismissed from service as a result of an investigation held June 16, 1971, being allegedly charged with violation of Rule 67 of the Agency's General Rules and Instructions and specifically charged with aiding, abetting and actively participating in an unauthorized work stoppage on Monday, April 26, 1971, and that:

(2) The Railway Labor Act was violated by R.E.A. by such dismissal in that Title 1 (**One**), Section 1 (One) Fifth excludes as an **employee** any individual not subject to the Carrier's continuing authority to supervise and direct the **manner** of rendition of his service and that:

(3) The R.E.A. by their maneuver further violated Title 1 (One), Section 2 (Two) Third of the Railway Labor Act by an act of coercion to the **employees'** representative while in the performance of his duties and that:

(4) George A. Smith shall be restored to service with seniority unimpaired and have his record cleared of all charges which relate thereto.

OPINION OF BOARD: Claimant was dismissed from the service of the **Company** effective June 18, 1971 as a result of an investigative hearing into charges that he violated Rule 67 of **Company's** General Rules and Instructions.

The hearing, originally scheduled for April 30, 1971, was held June 16, 1971 following four requests for rescheduling and postponement by Claimant. Despite adequate notice, including a personal telephone request on the morning of the hearing, neither **Claimant** nor his representative appeared at the hearing. As this Board has observed in another such case, failure to appear under these circumstances was at his own peril. (Second Division Award 6499, citing Third Division Award 13127). A close review of the transcript shows that irrespective of Claimant's self-abstention from the investigation, it was conducted in a fair and impartial manner.

From our review of the entire record, we are satisfied that the evidence developed at the investigation adequately supports the Company's imposition of discipline. Claimant did not attend the investigation, even after receiving four postponements, and offered nothing in his defense at that time. The place for a charged employee to make his defense (including mitigation) is at the hearing, not for the first time on appeal to this Board. Accordingly we find no basis for the contention that the discipline imposed **was** excessively harsh in the circumstances. We shall 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:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day **of** January 1974.