

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20601  
Docket Number CL-20517

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 (GL-7437) that:

1. Carrier violated the Telegraphers Agreement when on March 20, 1972, Block Operator E. C. Todd **was removed** from service and required to attend a trial on March 28, 1972 on the following charge:

"Being **in** an unfit condition to perform service **as** a  
Block Operator at **Edgewood** Tower, on March 20, 1972  
at **6:25** P.M., **while** on duty and under pay."

Then as decision of said trial, via G-32, dated March 31, 1972, Mr. Todd was dismissed from the service of the carrier.

2. Mr. Todd shall be returned to service with seniority and all other rights restored and paid for all time lost account involved violation of Regulations 1-E-1, 2-L-1, 2-O-1, **6-A-1(a)** and **(b)**, 6-C-1(a), 7-A-1(a), **(c)** and **(e)**, 8-E-1.

OPINION OF BOARD: This is a dismissal case based on Claimant's allegedly:  
'Being in an unfit condition to **perform** service as a  
Block Operator at **Edgewood** Tower, on March 20, 1972 at **6:25** P.M., **while on**  
duty and under pay."

Following an investigation, Claimant **was** dismissed March 31, 1972. Although **never** specified in the course of the proceeding, the charge related to **Claimant** being under the influence of alcohol on the day in question, and for this **reason** "being in an unfit condition...."

Petitioner raises the issue of the charge not **being** precise as required by the rules. This contention must be rejected since it **is self-**evident that Claimant and his representatives were fully apprised of the incident under question and were able to prepare a defense without impairment. We also must reject the contention that the hearing officer at the investigation exhibited bias which was prejudicial to Claimant's defense. Although the record does indicate possible bias on the part of the hearing officer as well as some intervention in the course of the examination of two Carrier witnesses, this conduct, though improper, did not fatally flaw the proceedings.

The dispute herein is unusual in several respects. First, as urged by Petitioner, Carrier's officer who removed Claimant from service **came** to the location obviously prepared to take action without any further investigation: he came with a relief operator accompanying him and waiting to be called **and** with an out-of-service notice in his pocket. The Organization alleges that Carrier had some unknown premeditated reason for desiring Claimant's discharge. On the other hand, the Carrier official, Assistant **Trainmaster Holt**, had **been** informed by Mr. Morris, Assistant **Supervisor of Communications and Signals**, that Claimant's speech was incoherent **and** that there was some signal trouble at the Tower. It would be speculative and unwarranted to attribute prior motivation **to** discharge to Carrier.

The other unusual element in this matter is the fact that Claimant had a chronic speech impairment which made him difficult to **understand** and further was lame, causing an unusual gait. All three Carrier witnesses testified that Claimant's speech was slurred and difficult to understand and that he was unsteady on his feet; they all testified that he was unfit to perform his duties. On the other hand, Mr. Morris, who **spent** an hour and a half with Claimant in the tower prior to his removal from service, testified that **he** performed the required work during this period satisfactorily, but that he seemed in a dazed condition and did not perform "... as an alert employee". Mr. Holt testified that Claimant upon **questioning** first denied, then admitted, and later denied that he had something alcoholic to drink earlier in the day, after which he got some sleep, prior to coming on duty at 3:00 P.M. **Holt** also testified that he smelled alcohol when talking to Claimant. It is noted, however, that Mr. Morris who spent a substantial period of **time** with Claimant made no such allegation, **nor** did the Police Officer who indicated that he was unable to smell anything at that time. In substance, then, we have credible testimony that Claimant had a more than usual speech problem, his speech was slurred; his gait was more than usually unsteady; and one witness testified that he smelled alcohol **on** Claimant's breath. This was countered with the fact that he did perform his duties properly, in spite of somewhat bizarre behavior, and that he had chronic disabilities in the two areas indicated. It is also noted that although Claimant stated that he was not guilty, he offered no testimony in his own defense. There is no credibility issue since all three witnesses testified on Carrier's behalf without contradiction.

This dispute must be distinguished from all the Rule G cases cited by and relied on by Carrier in that in this case there never was a **charge** or finding that Claimant was under the influence of alcohol. From the evidence of record, however, it is clear that there was substantial **uncontroverted** testimony that Claimant was indeed unfit for duty on the date in question;

the Carrier may not tamper with its major burden of safety by ignoring behavior such as that exhibited by Claimant, in any critical position. Therefore we find the Carrier was correct in its conclusion that **Claimant** was guilty as charged. With respect to the penalty of discharge imposed by Carrier, we find that this was a harsh and discriminatory assessment in view of Claimant's unblemished twenty year plus record and since this was not a **Rule G** violation. We shall reduce the penalty to a six month disciplinary lay-off; Claimant shall be made whole under the terms of **Rule 7-A-1(e)**.

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 penalty imposed was arbitrary and unfair.

A W A R D

That the penalty imposed shall be reduced to a six month disciplinary lay-off.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Parker*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1975.