

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20735
Docket Number CL-20586

Robert A. **Franden**, 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 Lang-**
(don, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(CL-7462) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on T. R. Kyle, Clerk, office of Receiver-Train Collections, Systems General Offices, Philadelphia, Pa.

(b) Claimant T. R. Kyle 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: Claimant was charged with a violation of **Rule IV, Employees Handbook**, dated July 1959, in that he instigated an attack upon a trainman while on his way to work on the morning of October 3, 1972.

The testimony of the trainman and two corroborating witnesses were offered to support the conclusion that Claimant, without legal provocation or justification, physically attacked the trainman and had to be forcibly restrained from continuing said attack. Claimant refused to testify when given the opportunity and declined to cross-examine any of the witnesses.

In the light of the foregoing facts coupled with Claimant's prior discipline record, we are not prepared to say that Carrier's assessment of discipline was either arbitrary or capricious, and the claim will be denied.

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;

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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 30th day of May 1975.