

NATIONAL **RAILROAD** ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20742
Docket Number CL-20556

Jospeh A. Sickles, 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-7442) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 15 days suspension on D. L. Sims, Ticket Clerk, 30th Street Station, Philadelphia, Pa., Eastern Region, Philadelphia Division.

(b) Claimant D. L. **Sim's** record be cleared of the charges brought against him on December 14, 1972.

OPINION OF BOARD: Claimant was instructed to report for an investigation concerning reporting late for work on November 16 and December 12, 1972.

Subsequent to the investigation, Claimant was advised that he was suspended for fifteen (15) days. During the appellate process, the discipline was reduced to a fifteen (15) day record suspension.

Claimant has urged, on the property and to this Board, a number of procedural objections to the manner in which the investigation was conducted. These objections appear to us to be well-founded. For instance, following an objection by Claimant's representative, dealing with the Hearing Officer delaying the investigation, the Hearing Officer stated:

"The presence of a representative at the investigation is only to insure that the employee's rights are not violated. The representative has no right of **cross-**examination and may be permitted to participate only to the extent deemed necessary to properly develop the facts."

The representative replied:

"Right, this is what I am doing. If you wish me to sit here quietly and let me watch you persecute this man, be my guest. It is my objection that this

"investigation is not being conducted in a fair and impartial manner."

The above cited exchange occurred shortly after the Hearing Officer advised Claimant:

"Do you understand that you will be expected to be present during the entire investigation and that you and your representative may question any witness who may testify?"

We feel that the following excerpt from Award 18963 is pertinent to this dispute:

"...we feel that Carrier's actions in restricting the cross-examination of Carrier's witnesses by Claimant as well as the restriction placed on the testimony of Claimant and the introduction of exhibits, all as set forth aforesaid, prevented Claimant **from** receiving a fair and impartial hearing, and we will sustain the claim."

The Board concludes that the Conducting Officer unduly **restricted** the representative in the presentation of his case in the Claimant's defense. Accordingly, we will 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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of my 1975.