

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20743

Docket Number CL-20588

Joseph 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-7461) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly **Rule 6-A-1**, when it assessed discipline of dismissal (Later reduced to a six month's suspension) on D. J. Faccone, **Clerk, Waverly** Yard, Newark, N.J., Eastern Region, New Jersey Division.

(b) Claimant D. J. **Faccone's** record be cleared of the charges brought against him on February 1, 1973.

(c) Claimant D. J. Faccone be compensated for wage loss sustained during the period out of service, plus interest at the rate of 6% per annum, compounded daily.

OPINION OF BOARD: Claimant was notified to appear at an investigation concerning a charge of conduct unbecoming an employee in that he allegedly reported for duty under the influence of intoxicants.

Subsequent to investigation, Claimant was dismissed from Carrier's service; however, during the appellate process, the discipline was reduced to a six (6) month suspension, based upon Claimant's Length of service and past record.

Carrier presented direct evidence to establish that when Claimant reported for duty he was weaving and reeling and fell into a chair. Additionally, he had difficulty in comprehending, and in responding to simple requests. On three (3) occasions, Claimant was requested to go home; but he refused until he was removed from service. At the time of the incident, Claimant conceded that he had been drinking.

At the investigation, Claimant acknowledged the accuracy of the above stated evidence, however, he stated that his drinking had been limited to two (2) beers, consumed approximately one (1) hour before reporting for duty. He also stated that he took some medication after he drank the beers, which accounted for his actions.

The Board is of the view that Carrier presented substantive evidence, including Claimant's own testimony, to prove the charge. Claimant's defense **is**, at best, speculative under this particular record.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

ATTEST: *A.W. Pauls*
Executive Secretary

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