

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award Number 22141  
Docket Number CL-21830

**Don Hamilton, Referee**

**PARTIES TO DISPUTE:**

(Brotherhood of Railway, Airline and  
{ Steamship Clerks, Freight Handlers,  
{ Express and station Employees  
(Consolidated Rail Corporation  
{ (Former Penn Central Transportation Company)

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8204) that:

(a) **The** Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of two days suspension, on P. J. Sladky, Ticket Seller, Newark, New Jersey Ticket Office.

(b) **Claimant Sladky's** record be cleared of the charges brought against him on June 13, 1975.

(c) **Claimant Sladky** be compensated for wage loss sustained during the period out of service.

**OPINION OF BOARD:** Following the conclusion of an investigation at which Ticket Seller Sladky was charged with failing to report for work on time on June 11 and 12, 1975, Claimant was found guilty of the charge and suspended from service for two days. **Carrier** based its *finding of* guilt *solely on the testimony* of Passenger Agent Hrehocik that on the two mornings in question he had witnessed the Claimant boarding a Metropark train not due to arrive at Claimant's work location until twenty minutes later than his appointed starting time. The Passenger Agent testified that he did not have a face-to-face confrontation with Claimant but that his observation was made from his auto parked some distance away. Claimant denied being late for work and denied riding the train on those two dates. Only Carrier's witness and the Claimant testified at the investigation and their testimony is contradictory.

It is *Carrier* which ~~must meet~~ the burden of **proof** at an investigation and it is **our opinion** that in this **case** it has failed to do so. Without additional evidence such as a confrontation between Passenger Agent Hrehocik and Claimant Sladky, possible within the time span supposedly involved, or without a work location check, which was also available to Carrier, we find the testimony of the Carrier witness simply insufficient to overcome Claimant's denials of tardiness. 2

The claim will be sustained.

**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 Employee involved in this dispute are respectively Carrier and Employee 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:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.

