

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD ~~DIVISION~~

Award **Number** 22213
Docket Plumber CL-21931

James F. **Scearce**, 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-8282, that:

(a) The Carrier violated the Rules Agreement effective February 1, **1968**, particularly Rules 2-A-1, 6-A-1, and other Rules, when it dismissed Claimant Saul Levoff from **employment** with the Penn Central Transportation Company, effective September 10, **1971**.

(b) That Claimant Saul Levoff now be allowed eight hours pay at the pro-rata rate of his position **F-428** beginning March 16, **1972**, and to **continue** for each and every work day thereafter until Claimant is allowed to return to his **former** position as provided for in Rule 2-A-7.

Claim has been presented and progressed in accordance with Rule 7-B-1 and should be **allowed**.

OPINION OF BOARD: Claimant was notified April 22, **1971**, to attend a hearing on his being absent from **April 12, 1971** to April 22, **1971**. Claimant, who was apparently recovering from an illness away from the hearing site, took issue with this directive through his local chairman and thereby secured 2 postponement. By letter dated August **19, 1971**, Claimant was **again** notified that an investigation on the same charge hereinbefore related would be held on **August 30, 1971**. He did not respond to this revelation nor did he ask for intercession by his local chairman. On September 10, **1971**, Claimant was advised of his dismissal. The first response to this action came from the Organization by letter dated October **18, 1971**, taking exception to the dismissal. The Organization contends the hearing and dismissal were improper in that the Claimant **marked** off sick and had not worked since December 3, **1970** -- a circumstance known and approved by the Claimant's supervisor. The Carrier disavows any official record of such illness and contends the Claimant was duly notified of its dissatisfaction with his absence.

While certain aspects of this case are not fully set forth in the record, it is clear enough that the **Claimant** was aware of the Carrier's intent to investigate the **circumstances** of his inactivity. **The** first time he requested **and received a postponement** -- a state of reserved action attested to by both **parties** on the record. Upon notice of the rescheduling of such **postponed** action, the Claimant took no action; neither did he react upon being notified of his dismissal. Regardless of the outcome of such an inquiry, it had to be obvious that some action was possible and probable. In neither case did he **move** to protect his rights under the Agreement. In essence, he slept **on** his rights. It is not this Board's duty to protect the **Claimant** against the implementation of procedures under the **Agreement** where he has already chosen to do nothing. His absence may well have been justifiable and already approved, but the time to have asserted such factors **was** at his notification of the investigation or certainly in a **timely manner** after being notified of his dismissal **under** the provisions of Article **6-A-1**. Claimant availed himself of **neither** opportunity.

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 is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

APPROVED::


Executive Secretary



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