

Award No. 5168
Docket No. CL-5148

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: H. A. Weiss, Tallyman, Pier 50, North River, New York, New York, be returned to service with all rights unimpaired and be compensated for all monetary loss sustained from August 17, 1948, until adjusted. (Docket No. 234)

OPINION OF BOARD: By the claim here made, the System Committee of the Brotherhood seeks to have Tallyman H. A. Weiss returned to service with all rights unimpaired and that he be compensated for all monetary loss sustained since August 17, 1948. On the property the claim was presented on the basis that the discipline imposed was too severe.

The charge made against claimant is as follows: "Failure to properly check and load freight consigned to Topping Brothers on Motor Haulage Truck No. 208, at 9:15 A.M., E.S.T., July 20, 1948, necessitating the unloading of truck".

The charge made does not relate to the question of the employe's qualification, within the intent and meaning of Rule 2-A-3 of the parties' Agreement, but to his failure to perform a duty assigned to him on a position for which he was qualified.

Claimant chose not to attend the trial and advised Carrier he would not be there because he was resting. He had been properly notified thereof. He gave no good reason for not being there. In advising Carrier that he would not be there he did not ask that the trial be either postponed or continued. Under these circumstances the Carrier was fully justified in proceeding therewith.

The evidence produced establishes that claimant failed to properly perform the duties as in the charge set forth. There seems no good reason for this failure except neglect. As a result, Carrier was put to additional expense, inconvenience and delay. It was proper for Carrier to impose discipline. This it did in the form of dismissal.

On his record claimant has four previous findings of failure to properly perform his duties. Under all the circumstances disclosed by the record, we think dismissal of the employe and the loss of all his rights as a result thereof is unreasonable.

We find claimant should be restored to service with all his rights unimpaired but denied compensation for all time lost.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That Carrier and 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 has been violated.

AWARD

Claim sustained as to restoration to service with all rights unimpaired but denied as to any compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1950.