

Award No. 11894  
Docket No. CL-11795

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Kieran P. O'Gallagher, Referee**

---

**PARTIES TO DISPUTE:**

**UNITED TRANSPORT SERVICE EMPLOYEES**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** The Carrier violated the effective agreement when it suspended Station Porter, Herman Harvey (Red Cap) without just and sufficient cause and on the basis of unproven charges.

The Carrier further violated the agreement between the parties hereto, particularly Rule 6, Paragraph B, when it arbitrarily suspended Red Cap Harvey prior to the holding of an investigation as provided for in the above cited Rule.

We request that the Claim for Red Cap Herman Harvey, as presented to the Manager Labor Relations, Pennsylvania Railroad Co., be allowed and the Carrier be required to compensate Claimant Harvey for all time lost and that his record be cleared of the instant charge.

**OPINION OF BOARD:** It is the contention of the Organization in the instant discipline case that the Carrier violated the current Agreement when it suspended Station Porter Herman Harvey (Red Cap) without just and sufficient cause and on the basis of unproven charges. The Organization further contends the Carrier violated Rule 6 (b) of the Agreement, charging Carrier arbitrarily suspended Red Cap Herman Harvey prior to the holding of an investigation.

The rule in question reads as follows:

"(b) In cases involving major offenses an employe may be held off duty pending investigation, trial, and decision. Written notice will be given if discipline is to be imposed and, except in cases involving major offenses, such written notice will be given ten days before discipline is effective. When discipline is by suspension, time lost as the result of being held off duty pending investigation, trial, and decision will be applied against the suspension."

We find nothing in the record nor in the current agreement to sustain the contention of the Organization that the Carrier acted in an arbitrary manner.

trary manner when it suspended Red Cap Harvey prior to the investigation; and we further find from the record that the rights of the Claimant to a fair and impartial hearing in accordance with the provisions of the agreement were fully protected and the rules governing the conduct of the investigation and trial were adhered to.

With respect to the contention of the Organization relative to the evidence presented at the trial, this Board, following many awards of this and other Divisions, finds that our function is to pass upon the question, without weighing it, that there is some substantial evidence to sustain a finding of guilty. We must decide this in the affirmative, and we must further find that the penalty imposed is a matter that rests in the sound discretion of the Carrier; and we are not warranted in disturbing it, absent a showing that the Carrier acted in such an unjust, unreasonable or arbitrary manner as to constitute an abuse of discretion.

**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.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963