

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6680) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of thirty days suspension on J. N. Rodman, Station Baggagehandler, Pennsylvania Station, New York, New York, New York Region, Metropolitan Seniority District.

(b) Claimant J. N. Rodman shall now have his record cleared of the charges brought against him on July 23, 1968.

(c) Claimant J. N. Rodman shall now be compensated for thirty days wage loss sustained by him as a result of the discipline.

OPINION OF BOARD: Petitioner contends (1) that the "investigation was not conducted in a fair and impartial manner because the conducting officer dismissed the only actual witness to the alleged violation before he could be fully cross-examined by the Claimant's Representative", (2) that the charges against Claimant were not proven and (3) that the Carrier has not met the burden of proof to sustain the discipline.

The principal witness at the Investigation was Mr. G. K. Giles, a Station Baggagehandler. He identified a statement made by him on July 23, 1968, the date of the incident. He was thoroughly cross-examined on that statement by Mr. Mathew Chester, Local Chairman who represented the Claimant. There is nothing in the record to indicate that either the Claimant or Mr. Chester asked to further cross-examine Mr. Giles. At no time did the Hearing Officer deny them every privilege of cross-examination. Mr. Giles was not dismissed as a witness before Mr. Chester completed his cross-examination. At the conclusion of the hearing, the Claimant was asked if he had "any comments or criticisms of the way this trial has been conducted" and he replied, "No sir."

Claimant denied that he was in the elevator when the accident occurred.

Mr. Giles, on the other hand, stated that he and the Claimant pushed a skid of parcels into the elevator, that he asked the Claimant, who was the elevator operator, if the skids were properly in the elevator, that Claimant said, yes, that Claimant closed the elevator door while Giles stood behind him, and that the accident followed. They were the only two persons in the elevator. The accident occurred because the skids were not properly in the elevator.

Carrier had every right and reason to believe Mr. Giles in preference to the Claimant. The evidence in the record supports the Carrier. There is no convincing proof that the Carrier was arbitrary, capricious or unreasonable in assessing a thirty day suspension penalty.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1970.