

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19490
Docket Number SG-19616

Joseph E. Cole, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtyz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, New Haven and Hartford Railroad Company that:

Carrier violated the current Signalmen's Agreement, particularly Rule 58, when it did not give Assistant Signalman C. R. Looby a fair and impartial hearing within ten (10) days after the appeal or submit a decision within ten (10) days after the appeal.

Carrier now return to service C. R. Looby, at some early date, with all rights and privileges as a consequence of the violation.

OPINION OF BOARD: 1. The record shows that the controlling agreement was the Signalmen's agreement with the effective date of January 1, 1955. The fact that this agreement was not invoked until later does not change the fact that there is no other agreement that supersedes this agreement and Rule 58 in this agreement is controlling here.

2. A fair and impartial hearing was held within the prescribed time and Claimant was advised of his dismissal as a result of the investigation and his testimony, all according to the agreement.

3. Further processing was done in the normal grievance procedure as set out in the rules.

4. This Board will not require a carrier to show leniency unless there has been fraud. The carrier may assess as great a penalty as is possible and may be merciful and lenient at any time it wants to be. But, lenience is not required.

5. There was ample evidence that Claimant was in violation of Rule G and that the penalty was invoked after a fair and impartial hearing in an order that was not arbitrary or capricious.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.