

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19682
Docket Number CL-19425

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6961)
that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly Rules 6-A-1 to 7-A-1, inclusive when it imposed discipline of seven days' suspension upon Archie H. Harris, Usher, Station Master's Department, Pennsylvania Station, New York, N. Y., former New York Division, following trial held on October 18, and 25, 1966.

(b) Discipline of seven day's suspension be removed from his record and that Archie H. Harris be compensated for all loss in earnings in accordance with Rule 7-A-1(d), now Rule 6-A-1(h). (Docket 2389)

OPINION OF BOARD: The Claimant, Archie H. Harris, at all times pertinent herein, held the position of Usher, Pennsylvania Station, New York, New York on the former New York Division. He had worked for the Pennsylvania Railroad Company for twenty-one years and as an Usher about seventeen years.

The duties of an Usher have been described by Claimant as follows:

"To dispense information, display gate signs and be familiar with the timetables of the New Haven RR, Pennsylvania RR, Long Island RR, and other interested railroads, and to assist patrons in the boarding of trains, to operate elevators, to deliver messages, to announce trains over the public address system and to perform other duties as may be specified and assigned to me."

On August 27, 1966, Claimant's tour of duty was 3:30 P.M. to 11:30 P.M. At that time Pennsylvania Station was being torn down, including many portions of underground facilities.

The Petitioner argues that Carrier violated the applicable Rules Agreement, Rules 6-A-1 to 7-A-1 when it imposed seven days suspension on Claimant Harris on the charge that he failed "to load Train NH-168, resulting in delay and inconvenience to passengers at Pennsylvania Station, N. Y., on August 27, 1966."

On the evening in question, it was the duty of Claimant Harris to go down on the train platform prior to the scheduled departure time of Train NH-168 and physically check the train to see if it was ready for loading. When ready he was required to proceed to the top of the stairway leading from the station concourse and put up the gate signs indicating that NH-168 was ready to receive passengers. The gate signs would be the signal for the Train Announcer to state over the public address system that NH-168 was ready to receive passengers.

Train NH-168 was scheduled to depart Pennsylvania Station August 27, 1966 at 8:35 P.M. Normally, a sleeping car is transferred from Train 162 to Train NH-168 but on August 27 the sleeping car was shopped for repairs and Train NH-168 had been made up and was ready to receive passengers at approximately 8:30 P.M.

The Assistant Station Master Bruno saw passengers transferring from Train 162 to Train NH-168 and passengers for Train NH-168 heading down the stairway to the train platform.

The Conductor of NH-168, about 8:35 P.M. asked Mr. Bruno if Train NH-168 could leave. Since the Conductor had not seen the Claimant on the upper level, Mr. Bruno went to the top of the stairway leading to the concourse and there saw no gate sign announcing that Train NH-168 was ready to receive passengers. The Usher who loads the passengers on the train normally puts up such a sign. Thinking that all passengers were aboard NH-168 Mr. Bruno gave the Conductor permission for the train to leave. As the train was leaving, the Assistant Station Master Bruno heard Announcer Ellison say that Train NH-168 would not be ready to receive passengers until about 8:40 P.M. When questioned, Ellison said he made the announcement because no gate sign was displayed at the head of the stairway, which indicated that the train was not ready to leave. Mr. Bruno alleges that he found the Claimant Usher Harris in the Ushers Room and when asked why he had not loaded the passengers on Train NH-168, the Claimant said he assumed the train would be late.

The Claimant indicates that he relied on the announcement of the Train Announcer that the train would not be ready for loading until 8:40 P.M.

There is testimony in the record to the effect that Train NH-168 seldom left on time. Considering this fact, the fact that the sleeping car normally transferred was not transferred on the evening in question and the fact that it was announced more than once that Train NH-168 would not be receiving passengers until about 8:40 P.M., it is not too much to say that a state of confusion existed in Pennsylvania Station on the night of August 27, 1966.

It seems to the Board that while there are certain factors that may be viewed as mitigating the failure of Claimant to see that the train was properly loaded, he should not have waited until after the scheduled departing time of the train before proceeding to the stairway which passengers go down to board the train.

Our review of the facts suggest that Announcer Ellison, Assistant Station Master Bruno and Claimant Usher Harris each made assumptions that turned out to be erroneous.

In view of the contributory negligence of others, it would be unreasonable to hold the Claimant solely responsible for the incidents that resulted in twenty-six passengers failing to board Train NH-168. However, some discipline is justified and while the seven days suspension seems excessive, in the light of all the circumstances, we do feel that a three day suspension would not be inappropriate.

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

The claim is denied but the Board orders the discipline lowered from seven to three days suspension in accordance with its Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.