

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19745
Docket Number CL-19697

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7074)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on T. J. Smith, Clerk, Earnest Yard, Earnest, Pennsylvania, Philadelphia Division, Eastern Region.

(b) Claimant T. J. Smith's record be cleared of the charges brought against him on May 19, 1970.

(c) Claimant T. J. Smith be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum, compounded daily.

OPINION OF BOARD: Claimant was employed as a Clerk at Carrier's Earnest Yard in Philadelphia. On May 16, 1970, subsequent to his regular tour of duty, Claimant was arrested by City Police with seven automobile tires in his automobile which had been removed from a box car in the Norris Yard. Claimant and his brother, who was with him at the time he was apprehended, were charged with burglary, larceny, receiving stolen goods of a railroad car and conspiracy. Claimant was given written notice the same evening that he was being held out of service "pending trial and decision" in connection with his arrest and having stolen tires in his possession. He subsequently received a notice of an investigation to be held on the following charges:

- "1. Violation General Rules 'E' Penn Central Book of Rules for Conducting Transportation, effective April 28, 1968 on Saturday May 16, 1970 at Norristown, Pa.
2. Violation General Rules 'L' Penn Central Book of Rules for Conducting Transportation effective April 28, 1968 on Saturday May 16, 1970 at Norristown, Pa."

The investigation was held on May 25 and August 31st, 1970 and subsequently Claimant was dismissed from service. The Organization first argues that the charges quoted above were not specific and impaired Claimant's rights to a fair investigation. We do not agree. It is clear from the record that Claimant and his representatives were fully aware of the subject matter under inquiry; they could easily have requested an adjournment of the hearing, if they so desired, to prepare a defense, but failed to do so. We have long held that a notice of charge is sufficient if it reasonably apprises the employee of the set of facts under inquiry and permits him to prepare a defense without the element of surprise; in short the notice must not prejudice the right of the employee to due process (see for instance, Awards 12255, 12898, and 17998). In this case we do not believe that Claimant was unaware of the precise incident under investigation.

An examination of the transcript of the investigation reveals substantial evidence in support of the conclusion reached by Carrier. We have long held (See Awards 2621, 9045, 11017 and 11324 among others) that we will not upset the penalty meted out by Carrier unless it clearly appears that the disciplinary action was unjust, unreasonable or arbitrary. In this case we do find the Carrier's discipline imposed was commensurate with the offense and not improper in any respect.

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 Employee involved in this dispute are respectively Carrier and Employee 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 11th day of May 1973.