

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19747  
Docket Number CL-19723

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-7084) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Commissary Clerk, Walter N. Wright, Sleeping and Parlor Car Service Department, Washington Terminal, Washington, D. C.

(b) Claimant Walter N. Wrights' record be cleared of the charges brought against him on December 8, 1970.

(c) Claimant Walter N. Wright 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: On December 3, 1970, Claimant was working as a Commissary Clerk in the Dining Car Department at the Washington Terminal of the Carrier. On December 8, 1970 Claimant was issued a Notice of Trial or Investigation on the following basis:

"Misappropriating Company supplies when you placed 24 individual bottles of Scotch whiskey in public locker #1179, Union Station, Washington, D. C. the morning of December 3, 1970."

Following an investigation held on December 17, 1970, Claimant was dismissed from service by a notice on December 30, 1970.

The crux of the matter is whether there was substantial evidence in support of Carrier's conclusion of the guilt of Claimant. The issue turns on the identification of Claimant - there being credible evidence that a bag containing the whiskey (which had company markings on the label) was observed being placed in the locker in question. The transcript of the investigation reveals that a company patrolman made a descriptive identification of Claimant the morning of the incident and a specific identification at the hearing. This is countered by Claimant's testimony in which he denies any participation in the affair. Without regard to arguments raised by both Petitioner and Carrier

with respect to evidence which could have but was not introduced into the record, we have here a credibility question. As we have said on many prior occasions we cannot resolve credibility issues; this province is reserved to the Carrier. Once the patrolman's testimony is credited and Claimant's is not, the weight of evidence clearly supports the Carrier's conclusion of the guilt of the Claimant. The guilt of the Claimant having been established, we do not find the penalty 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 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.