

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19791
Docket Number TE-19653

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly Transportation-Communication Division, BRAC)
PARTIES TO DISPUTE: (
(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 General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company (former NYC Western District), TC-5834, that:

1. The dismissal of Mr. P. H. Dibell based on the rule infraction, in our estimation is quite unreasonable and constitutes an arbitrary exercise of the Management's discretion and authority. Mr. Dibell admits to the violation but such wrong was certainly not of a severe or serious nature as to warrant dismissal from the service of Carrier.

2. That the Carrier reinstate Mr. Dibell with full seniority rights unimpaired and compensate him for all time lost.

OPINION OF BOARD: The claimant in this case, a Block Operator, was charged with being off the property without permission before being properly relieved at about 7:15 a.m. on May 26, 1971. The record clearly indicates that at the investigation on the property the claimant admitted that he was not present at the tower but was at the Lake Avenue Coffee Shop having coffee with the third trick crew.

The Organization contends that the claimant was never advised of the rules and that, in any event, the discipline meted out was excessive. The Organization cites an Award by Referee Zack (14448) in which this Board held that the imposition of the dismissal penalty was excessive and reduced the penalty to a ninety day suspension.

The Carrier contends that the claimant's guilt of the charge of absenting himself from duty before being properly relieved from duty is clearly established. Furthermore, the grievant offered no adequate excuse nor did he express any remorse concerning his actions. While it is possible that the claimant was not notified of the rules covering relief from duty, the fact is that he was previously employed as a Block Operator by the New York Central in 1952 and worked as such until 1959 and had been rehired as a Block Operator by the Penn Central on March 17, 1970.

In this case it is uncontroverted that the claimant was absent without permission and without being properly relieved. This Board has held in Award #14601 (Ives) that: "Claimant's conduct was deliberate, and the Carrier had a right to impose the discipline it believed necessary unless the penalty was arbitrary, capricious or unsupported by the record. Unauthorized absences from duty, if proven, are serious offenses, and often result in dismissal from service. In accordance with the broad latitude given carriers by this Board in the matters of assessing discipline, we will not upset the punishments decided upon by the Carrier, even though the sanction chosen may be greater than that which the Board might choose."

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

The Agreement was not violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1973.