

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19793  
Docket Number CL-19692

Alfred H. Brent, 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-7069)  
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Joseph Gill, Truckman Laborer, Dining, Sleeping and Parlor Car Service Department, Long Island City, New York.

(b) Claimant Joseph Gill's record be cleared of the charges brought against him on October 30, 1970.

(c) Claimant Joseph Gill 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: The Organization contends that Mr. Gill was improperly disciplined when he was discharged for his alleged failure to assist in loading food carriers on Train 107, as directed by his supervisor. At the hearing Mr. Gill denied that he had been given the alleged instructions by his supervisor.

The record on the property shows that the Carrier's witnesses claim that they discussed the assignment with Gill who said that the assignment was not "his job". Such a claim that an assignment is not within the scope of his duties is grievable, but there is no evidence in the record that the claimant ever grieved.

This Board has repeatedly held that it will not substitute Board judgment for the Carrier's assessment of discipline if the Carrier's action was not an abuse of its discretion. The Organization's request for leniency for men who are on a guaranteed job is inappropriate for this Board to consider, absent a showing that the Carrier's action was arbitrary, capricious, vindictive or excessive. There is no probative evidence in the record that such was the case.

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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 has not been violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

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