

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19874
Docket Number CL-19876

C. Robert Roadley, 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-7126)
that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1 to 7-A-1, inclusive, when it assessed discipline of dismissal on Arlene B. Recla, Matron in Women's Rest Room, Penn Station, Newark, New Jersey, former New York Division.

(b) Claimant, Arlene B. Recla's record be cleared of the charges brought against her on December 28, 1967.

(c) Claimant, Arlene B. Recla 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. (Docket 2505)

OPINION OF BOARD: This is a discipline case in which the Claimant was dismissed from service for using intoxicants while on duty, for refusing orders in violation of Rule 7 of the Pennsylvania Railroad General Rules for employees not subject to the Rules for Conducting Transportation, and for violation of Rule 8 of the Pennsylvania Railroad General Rules for employees not subject to the Rules for Conducting Transportation.

Petitioner's position is that claimant was denied a fair and impartial hearing in violation of Agreement Rules 6-A-1 and 7-A-1. Further, in appealing the decision of the Carrier, Petitioner averred that (1) the trial was procedurally defective, (2) the charges relating to the use of intoxicants were not supported by the trial record in the case, and (3) the discipline of dismissal was excessive.

A careful review of the record shows that, under date of December 28, 1967, a customary Notice of Trial or Investigation was sent to claimant, receipt of which was acknowledged on January 4, 1968, bearing claimant's signature. This Notice of Trial or Investigation set forth the charges that were to be the subject of the investigation and were, in fact, the charges upon which the investigation was conducted. The actual investigation began on January 17, 1968, having

been postponed at the request of claimant's representative. Investigation was recessed at the conclusion of the first day and resumed on January 25, 1968. We find that claimant was given ample notice of the investigation sufficient for her to be aware of the charges so as to be able to prepare her defense and that the notice of investigation was timely served. We further find that the investigation was held in a fair and impartial manner.

This Board has held, on numerous occasions, that once a determination has been made that a subject investigation has been held in a fair and impartial manner, we will not substitute our judgement for that of the carrier if the record shows that the finding of guilty as charged contains material and substantial evidence which, if believed by the trier of the facts, supports such a finding.

In Award 19216, we stated:

"This Board has held many times that it will not disturb Carrier's disciplinary decision where it is supported by substantial evidence with probative value and hence is not arbitrary or capricious."

In Award 13179, we stated:

"We do not weigh the evidence de novo. If there is material and relevant evidence, which if believed by the trier of the facts, supports the finding of guilt, we must affirm the finding."

Also see Awards 19310, 19433, 19487, and others.

This principle was further enunciated in Award 19489 wherein we stated, in part:

".... our function in discipline cases is not to substitute our judgement for the company or decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty."

Having found that claimant was afforded a fair and impartial investigation, and in light of this Board's long standing policy regarding similar discipline cases, it is our determination that the conclusions reached by Carrier were not arbitrary, capricious, or an abuse of discretionary authority and we will deny the claim.

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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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.