

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20736  
Docket Number CL-20647

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees

PARTIES TO DISPUTE: (

(George P. Baker, Robert W. Blanchette and Richard  
( C. Bond, Trustees of the Property of  
( Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7501) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Claimant W. M. Johnson, Clerk-Timekeeper at the Selkirk Yard in Albany, N.Y., Northeastern Region, Mohawk Division.

(b) Claimant W. M. Johnson's record be cleared of the charges brought against him on February 24, 1973.

(c) Claimant W. M. Johnson 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 Claimant regularly assigned as a timekeeper, Selkirk Yard, 8 AM to 4 PM, was notified on February 24, 1973, that he was being held out of service pending trial on a charge of falsifying Weekly Time and Labor Distribution cards. Following trial, Claimant was dismissed from the Carrier's service. At the time of dismissal, Claimant had 43 years service with the Company.

Upon our review of the transcript of the investigation, we are inclined to agree that Carrier has offered substantial evidence in support of the charge, although there was, in some respects, conflicting evidence on some material points, particularly with respect to previous instructions which he allegedly received from his former superiors which he assertedly misinterpreted. However, as stated in many awards, in disciplinary proceedings the Board will not weigh evidence, attempt to resolve conflicts therein, pass upon the credibility of witnesses or substitute its judgment for that of the Carrier where there is substantial evidence to support the charge.

Although we recognize Carrier's rights as reflected in the foregoing, it is also noted that Claimant had 43 years of service with the Company, and while years of service do not give an employe the right to deliberately violate Carrier's rules, in this particular case, 43 years of faithful service with an apparent good record, must be considered in mitigation of the penalty imposed.

We therefore direct the Claimant be restored to service with his rights unimpaired, but without pay for time lost.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated in accordance with the Opinion.

A W A R D

Claim disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulose  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1975.