

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20741
Docket Number CL-20552

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and Jervis Lang-
(don, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7441) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 30 days suspension on D. M. Light, Auto Messenger Clerk, at EA Yards, Buffalo, N.Y., Northern Region, Buffalo Division.

(b) Claimant D. M. Light's record be cleared of the charges brought against him on January 2, 1973.

(c) Claimant D. M. Light be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant was notified to attend an investigation concerning an allegation that he refused to perform the duties of his position.

Subsequent to investigation, Claimant was assessed a thirty (30) day suspension.

On the evening in question, Claimant specifically refused to operate a rented vehicle because it was not equipped with a registration or leasing papers to identify ownership, and, he asserted, it was therefore illegal to drive the vehicle. Claimant persisted in his refusal after receiving a direct order to drive the vehicle. It is necessary for Claimant to drive a vehicle in order to properly perform his regular duties.

The issue is framed at Page 3 of the Ex-Parte Brief:

"The questions to be decided in this case are whether or not the Claimant can be held to have been insubordinate in declining to operate the Carrier's motor vehicle in violation of the New York State Motor Vehicle Laws...."

When Claimant refused to comply with an instruction because obedience would have "violated the law", he assumes a risk of demonstrating that the act was unlawful. This is quite apart from the concept that an employee should comply in the first instance and then submit a grievance.

Our review of the record fails to reveal that Claimant has made such a showing. In fact, the contrary appears to be the case. A Court of competent jurisdiction, in the geographic area involved, stated, in People v. Simon, 33 N.Y.S. 2d 14:

"If the Legislature intended that a resident operator of a motor vehicle should 'carry' the certificate of license with him, it would have said so. Therefore, there is no duty resting upon such an operator to do so; he need only 'produce' the certificate or 'exhibit' the license upon a proper 'demand'.

The rule as to operators' licenses has been explained thus: Failure to exhibit an operator's license for a motor vehicle is not the basis for a conviction, as 'the statute quoted prescribes a rule of evidence only, and the presumption which it affords' may be overcome by uncontradicted evidence that the operator is properly licensed. People on Complaint of Keegan v. Meyer, 194 App. Div. 822, 186 N.Y.S. 434, 435.

Here, the same rule should obtain in the production of a certificate of registration: Failure to produce a certificate of registration for a motor vehicle may not be the basis for a conviction, as subdivision 4 of Section 11 quoted, supra, prescribes a rule of evidence only, and the presumption of guilt may be rebutted by uncontradicted evidence of proper registration, as by the subsequent production of the certificate itself."

The Organization has raised certain procedural questions dealing with the conduct of the investigation. Although there were certain rulings which excluded testimony, they dealt with the condition of a different vehicle. We do not find, under this record, that the Claimant's procedural rights were violated.

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 Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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. Paulos
Executive Secretary

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