

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22083
Docket Number CL-21797

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8182) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline on L. J. Pappageorge, Chicago, Illinois, in the following cases:

• Claim 1 - A reprimand for being unavailable for service on January 5, 1975.

Claim 2 - A reprimand for being unavailable for service on January 6, 1975.

Claim 3 - A reprimand for being unavailable for service on January 9, 1975.

Claim 4 - Five days suspension for being unavailable for service on January 16, 1975.

(b) Claimant Pappageorge's record be cleared of all four charges brought against him on January 24, 1975.

(c) Claimant Pappageorge be compensated for wage loss sustained in accordance with the provisions of Rule 6-A-1(h).

OPINION OF BOARD:

On the dates involved in these occurrences, January 5, 6, 9, and 16, 1975, Claimant Pappageorge was the incumbent of an extra clerk position, Chicago, Illinois. He was 33 years old and had over 13 years' service with the Carrier. On January 24, 1975, Carrier sent Claimant four notices of investigation. All four investigations were scheduled for January 30, 1975, but all were postponed and eventually held on February 26, 1975. On February 26, 1975,

four notices of discipline were sent Claimant and the following discipline was assessed:

- Claim 1: A reprimand for being unavailable for service on January 5, 1975.
- Claim 2: A reprimand for being unavailable for service on January 6, 1975.
- Claim 3: A reprimand for being unavailable for service on January 9, 1975.
- Claim 4: Five days' suspension for being unavailable for service on January 16, 1975.

The transcript of each investigation discloses that Claimant testified that his reason for not working on each date was:

1. On January 5, having worked 32 out of 57 hours, he refused to work a second tour of duty.
2. On January 6, having worked 48 out of 97 hours, he refused to work a second tour of duty.
3. On January 9, he refused to accept a call which conflicted with a prior commitment to be available for union business (Claimant held official union office).
4. On January 16, having worked 40 out of 73 hours, including 16 hours on January 13, he refused an assignment.

Notwithstanding the above defenses for not protecting extra board service, Claimant was found to be guilty of the charges placed against him. The transcripts of the four investigations are quite brief, and little or no evidence is contained therein except the establishment of the fact that Claimant refused four calls for service on the dates noted (which Claimant readily admitted) and his proffered reasons for doing so.

The Board has often held that extra board employees' failure to accept calls to duty is grounds for discipline. Such discipline, however, can only be supported when a clear showing is made that the charged employee did not have a valid reason or that he habitually exhibited conduct of malingering or avoiding service. No such showing is made in this case. In the 29-day period covered by the events

giving rise to Claimant's discipline, for example, he was off sick two days, had no orders or calls to work on two other days, was off on union business on three days, refused calls on two days, but still managed to perform service for the Carrier on twenty-eight separate eight-hour tours of duty.

On the basis of the totality of circumstances herein, the Board must hold that Carrier abused its discretion in the assessment of any discipline. The Board will order that the discipline assessed in each claim be set aside and all references thereto be removed from Claimant's record.

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 violated.

A W A R D

Claims (a), (b), and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.