

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22213
Docket Number CL-21931

James F. Searce, 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-8282, that:

(a) The Carrier violated the Rules Agreement effective February 1, 1968, particularly Rules 2-A-1, 6-A-1, and other Rules, when it dismissed Claimant Saul Levoff from employment with the Penn Central Transportation Company, effective September 10, 1971.

(b) That Claimant Saul Levoff now be allowed eight hours pay at the pro-rata rate of his position F-428 beginning March 16, 1972, and to continue for each and every work day thereafter until Claimant is allowed to return to his former position as provided for in Rule 2-A-7.

Claim has been presented and progressed in accordance with Rule 7-B-1 and should be allowed.

OPINION OF BOARD: Claimant was notified April 22, 1971, to attend a hearing on his being absent from April 12, 1971 to April 22, 1971. Claimant, who was apparently recovering from an illness away from the hearing site, took issue with this directive through his local chairman and thereby secured a postponement. By letter dated August 19, 1971, Claimant was again notified that an investigation on the same charge hereinbefore related would be held on August 30, 1971. He did not respond to this revelation nor did he ask for intercession by his local chairman. On September 10, 1971, Claimant was advised of his dismissal. The first response to this action came from the Organization by letter dated October 18, 1971, taking exception to the dismissal. The Organization contends the hearing and dismissal were improper in that the Claimant marked off sick and had not worked since December 3, 1970 -- a circumstance known and approved by the Claimant's supervisor. The Carrier disavows any official record of such illness and contends the Claimant was duly notified of its dissatisfaction with his absence.

While certain aspects of this case are not fully set forth in the record, it is clear enough that the Claimant was aware of the Carrier's intent to investigate the circumstances of his inactivity. The first time he requested and received a postponement -- a state of reserved action attested to by both parties on the record. Upon notice of the rescheduling of such postponed action, the Claimant took no action; neither did he react upon being notified of his dismissal. Regardless of the outcome of such an inquiry, it had to be obvious that some action was possible and probable. In neither case did he move to protect his rights under the Agreement. In essence, he slept on his rights. It is not this Board's duty to protect the Claimant against the implementation of procedures under the Agreement where he has already chosen to do nothing. His absence may well have been justifiable and already approved, but the time to have asserted such factors was at his notification of the investigation or certainly in a timely manner after being notified of his dismissal under the provisions of Article 6-A-1. Claimant availed himself of neither opportunity.

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 is dismissed.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

APPROVED: A. W. Paulos

Executive Secretary

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