AWARD NO. 44
Case No. 44

SPECIAL BOARD OF ADJUSTMENT NO. 421

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION)
vs.)
NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT (Except Boston and Albany Division) and NEW YORK DISTRICT)

STATEMENT OF CLAIM:

Claim of the General Committee of the Transportation-Communication Employees Union on the New York Central System (Eastern District), that:

1. Carrier violated the terms of the Agreement between the parties when, on November 19, 1964, without just cause, it dismissed Mr. Frank Lisco.

2. Carrier shall be required to return Frank Lisco to service with all rights unimpaired, pay him for all loss of wages and for time and expenses incurred while attending a hearing on November 12, 1964.

OPINION OF BOARD:

Claimant Frank Lisco was hired by the Carrier on July 13, 1942 as a Telegrapher on a position covered by the parties' Agreement then in effect. His seniority was carried on the Mohawk Division seniority roster, giving him rights to work positions under the scope of the Agreement from the Albany area in the east to Kirkville in the west. The Mohawk Division headquarters are located in Utica, New York.

On September 15, 1963 claimant, who then held no regular assignment, was called from the guaranteed extra list to post on the 10:59

P.M. - 6:59 A.M. trick assignment at Interlocking "B", Albany, New York, commencing September 16, 1963. This assignment was approximately 55 miles distant from his headquarters at Canajoharie. Claimant failed and refused to report to this assignment, on the ground that Carrier did not provide him with free transportation from his headquarters to this assignment. Following a hearing on the property, Claimant was dismissed from service on the ground that he had violated Operating Rules A-1, B, 725 and 850 by failing to post, as ordered, at Interlocking "B" on September 16, 1963.

The record discloses that Claimant Lisco was authorized to use his personal automobile to cover the position at Interlocking "B" at Albany on the subject date, because there was no free rail transportation available to him at his Canajoharie headquarters. Agreement Article 3 specifically provides that an extra employee will be reimbursed for the use of his private automobile to protect positions for which called at the mileage rates provided in Section (f) of said Article. Claimant Lisco possessed an automobile but he refused to use it to cover the involved position.

The evidence compels us to conclude that Claimant Lisco made himself liable to disciplinary action by his refusal to comply with the Carrier's instruction to post at Interlocking "B" on September 16, 1963. There is no support in Article 3 or any other Agreement provision for his conduct. But under all the circumstances, including claimant's length of service, we are of the opinion that dismissal

was an excessive penalty. We will hold that Claimant Lisco shall be reinstated without back pay but with seniority rights unimpaired and without loss of such vacation rights as may have been earned.

AWARD:

Claimed sustained in part and denied in part as stated in above Opinion of Board.

Lloyd H. Bailer
Lloyd H. Bailer, Chairman

T. A. Seymour
T. A. Seymour, Carrier Member

R. J. Woodman
R. J. Woodman, Employee Member

Dated: November 18, 1966