

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19928**
Docket Number CL-20118

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(**George P. Baker, Richard C. Bond, and Jervis Langdon, Jr.,**
(Trustees of the Property of Penn Central **Transportation**
(Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(CL-7258) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on D. C. Hewitt, Crew Dispatcher, Rose Lake Yard, on December 24, 1971, St. Louis Division, Southern Region.

(b) Claimant D. C. Hewitt's record be cleared of the charges brought against him.

(c) Claimant D. C. Hewitt be restored to service with seniority and all other right **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: Claimant was employed by Carrier as a Clerk on May 10, 1966. On November 7, 1971, Claimant while occupying the position of second shift **Crew** Dispatcher, was removed from service. He was served with a notice of hearing in connection with the following charges:

"1. Being in an unfit condition to properly perform your duties while assigned to Position 250 starting 3:00 P.M. November 7, 1971.

2. Violation of Rule **G** of the Book of Rules for Conducting **Transportation** on the Penn Central Railroad while assigned to Position 250 starting 3:00 P.M., November 7, 1971."

Following an investigative hearing Claimant was dismissed from service.

The Organization claims that under the Rules Carrier is required to advise the employee of the exact offense involved and that in this matter the charge was erroneous. Petitioner contends that the reference to Rule **G** was incorrect; the "**Book** of Rules for Conducting Transportation" is not applicable to the clerical force. The Rule refers to the use **or** possession of

intoxicants and Petitioner states that the Carrier should have charged Claimant with Rule 10 of the "General Rules for **Employees** not Otherwise Subject to the Rules for Conducting Transportation;" However, Petitioner states that it is aware that through general usage "Rule G" is generally considered to be an all-inclusive term referring to any rule dealing with the use or possession of intoxicants. More significantly, we must reject Petitioner's argument since the question of the charge was not raised at the hearing or at any time on the property; such omission constitutes a **waiver**. (See Awards 17241, 16170, and 14444).

Petitioner also argues that Claimant was deprived of a fair hearing in that the hearing officer did not (apparently) make the credibility findings or assess the discipline. Without considering the merits of this contention we must dismiss it since the argument was not raised on the property (Award 16348).

The record of the hearing presents a conflict in testimony. Claimant admitted he might have been unfit for work, but he denied he was intoxicated and attributed his condition to lack of sleep and perscription nerve medicine. Later he admitted he had some alcoholic beverage some five or six hours prior to reporting for work. Claimant's witness, the first shift Crew Dispatcher, who saw Claimant at 3:00 P.M., stated that he appeared completely **normal** to him. The **Trainmaster**, who saw Claimant at about 6:30 P.M., testified that he was intoxicated. The Supervisor, who was with the **Trainmaster** at 6:30 P.M. first testified that he was intoxicated and then stated that he was sleepy and tired. It is unfortunate that Carrier did not choose to investigate the effects of the medication or consult with the doctor who had been treating Claimant. However, as Carrier points out, it is not our function to determine the credibility of witnesses nor weigh the evidence, when there is valid and sufficient evidence, even though denied, to support Carrier's decision. We have reiterated this principal in many Awards. In Award 12074 we said:

"There is a conflict between the evidence of Claimant and that of Mr. Molstad. It is not for us to resolve that conflict. We may not pass upon the credibility of witnesses nor the weight of the evidence. That is reserved to the Carrier. . . ."

With its responsibility to the public, Railroads have generally quite properly considered the use of intoxicants to be an extremely serious offense. Dismissal is appropriate under the Rules for this infraction and we do not find that the imposition of this form of discipline in this case "as either arbitrary or capricious.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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