

Referee Harold M. Weston

PARTIES TO DISPUTE: Railroad Yardmasters of America
Penn Central Transportation Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

SYSTEM DOCKET 386PHILADELPHIA TERRITORY - PHILADELPHIA CASE 46/71

Appeal of J. J. Williams from discipline of dismissal in all capacities in connection with the following charges:

Charge #1. Participating (by being present) during the unauthorized removal of material from car GTXX 300754 located on Penn Central Company property during the period of 12:05 AM to 12:20 AM October 3, 1971, violation of the 3rd paragraph of Rule "L", Penn Central Rules for Conducting Transportation.

Charge #2. Deliberate and willful disregard of the Company's interest by observing and failing to report to the proper official the unauthorized removal of material from car GTXX 300754, located on Penn Central property at Frankford Jct., Pa., by clerical employes John Knotwell and T. J. Kirby during the period of 12:05 AM to 12:20 AM, October 3, 1971, violation of the 7th and 1st paragraphs of Rule "E", Penn Central Rules for Conducting Transportation.

Charge #3. Failing to properly supervise employes in your charge by allowing Clerk T. J. Kirby to absent himself from his assignment G-253 at Frankford Jct. yard office commencing at 12:30 AM October 3, 1971, violation of 2nd paragraph of Rule 400 N-7, Penn Central Rules for Conducting Transportation.

Charge #4. Failing to report to the proper official the absence of Clerk T. J. Kirby from his assignment G-263 at Frankford Jct. yard office, commencing at 12:30 AM, October 3, 1971, violation of the 1st paragraph of Rule E, Penn Central Rules for Conducting Transportation.

OPINION OF BOARD: Claimant, a yardmaster with 11 1/2 years service including over 9 as yardmaster, was dismissed on the basis of Carrier's findings that he (1) stood passively by while two clerks, Knotwell and Kirby, removed cartons of goods that belonged to Carrier's customers from a freight car, (2) permitted Kirby to leave the property

while still on duty and (3) failed to report either the unauthorized removal of cartons or Kirby's departure to his superiors.

Carrier's findings that Claimant was present from 12:05 to 12:20 A.M. on October 3, 1971, while Knotwell and Kirby removed the cartons and placed them in their own automobiles is supported by the testimony of three Carrier police officers, Captain Spain, Sergeant Robinson and Sergeant Leach. Sergeant Robinson's testimony is particularly specific and clear in that regard and is corroborated by Captain Spain and Sergeant Leach on all essential details. While Claimant and several yard crew employees insisted that he was on duty in the yard office throughout the period in question and that the night was so foggy that reliable identifications could not have been made from the police observation posts (some 150 feet away), the police witnesses stood up well during cross-examination and their testimony was definite and consistent.

It is well settled by the awards of this Board that it is not our function to resolve conflicts in testimony and that findings in discipline cases are not to be disturbed when they are supported by substantial, though controverted, evidence and are free from prejudicial procedural error. In the light of those principles and this record, we find no persuasive basis for setting aside Carrier's findings in the present case. Such extreme discipline as dismissal is disturbing but we are satisfied that we should not substitute our own judgment for that of Carrier as to the measure of discipline in view of the gravity of the offense and the police witnesses' positive identifications.

In reaching our decision, we have given no weight to Carrier's finding that Claimant failed to report Kirby's premature departure since the record does not clearly support that finding. We also have found no merit in Carrier's contention that Petitioner did not comply with Rule 4-G-1's requirement that claims for compensation must be presented within 60 calendar days; the claim was filed on December 8, 1971, well within the prescribed time, since the occurrence on which it is based is Carrier's decision on October 21, 1971, to discipline Claimant. Until that decision was made, Petitioner could not determine the nature and scope of its claim. On the other hand, it was not error for Carrier to withhold Claimant from service pending investigation and the record discloses no procedural defect that is prejudicial to Petitioner's case.

The claim will be denied.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

E. A. Killeen

E. A. Killeen
Secretary

Dated at Chicago, Illinois, 1st day of May, 1973.