Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3158
FOURTH DIVISION Docket No. 3113

Referee Dana E. Eischen

PARTIES TO DISPUTE: Railroad Yardmasters of America

George P. Baker, Robert W. Blanchette and Richard C. Bond, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: SYSTEM DOCKET 449
SOUTHERN REGION - CASE NO. SYM - 6-72

Appealing disqualification of Mr. D. Durham, Yardmaster at Avon Yards, that he be reinstated as Yardmaster, with all rights unimpaired, and that he be paid any monies lost due to this disqualification.

OPINION OF BOARD: This is a discipline case wherein Claimant was disqualified as a yardmaster following a derailment which blocked the hump at the Avon, Indiana Yard on August 10, 1972. Claimant was working a 3 to 11 P.M. shift as Hump Yardmaster on August 10, 1972. Under his direction, a hump crew doubled a cut of 26 cars out of No. 2 Receiving Track to 84 cars on No. 7 Receiving Track. Among the 26 cars pulled from No. 2 Track were two bad order cars which had been cabled or chained together because they could not be coupled. When these cars were humped they apparently caused the derailment. Immediately following the derailment Claimant was notified orally by the Assistant Terminal Superintendent that he was disqualified from any and all service as a yardmaster and this was confirmed by letter dated August 11, 1972.

Claimant argued throughout handling and before our Board that the discipline cannot stand because no hearing and investigation was held to determine his responsibility, if any, for the derailment. Upon consideration of the controlling Agreement language we are constrained to disagree. We have been called upon frequently to review this precise question and consistently have held as follows:

> "We are troubled by the fact that no hearing, ordinarily an essential element in discipline proceedings, has been accorded Claimant. However, the parties have committed themselves to a rule that differs considerably from the provisions we usually are called upon to consider. Rule 6-A-1, the controlling provision here, does not provide for a hearing but instead sets up an appeals procedure whereby the parties submit written presentation at various levels 'When it is considered that an injustice has been done with respect to any 'matter' arising under the Agreement.

"Our function is to interpret the language contained in the parties' agreements and we are not at liberty, as a long line of awards makes clear, to add to language or inject our own theories regarding discipline procedures or other labor relations matters."

Award 2784, See also Awards 1805, 1907 and 2831.

Nor are we prepared to hold that the discipline imposed would be unreasonably harsh or excessive if in fact responsibility for the derailment is firmly affixed to Claimant. Carrier has given negligence and ineptitude as the reasons for the disqualification. Accordingly, the sole remaining question for resolution is whether substantial evidence on the record supports Carrier's conclusion. Stated in the vernacular: "What did the Claimant know and when did he know it?"

Carrier maintains that Claimant was working the day before the derailment when the bad order cars arrived at Avon Yard. Also Carrier asserts that the first trick yardmaster advised Claimant on August 10, 1972 not to hand the cars on Track No. 2 and that the maintenance of Equipment Department similarly warned Claimant. We have scrutinized the record in this regard and find nowhere therein any corroborating evidence that Claimant was in fact warned and placed on actual notice. Our Board has on numerous occasions held that bare assertions by either party, unsupported by any documentary or testimonial evidence, are not alone sufficient to carry a requisite burden of proof. Indeed, the only piece of documentary evidence on this point is the switching list for August 2, 1972 which carries no indication that the cabled cars were among those on Track 2. Nor can we conclude from this record that mere presence on August 9 when the bad order cars arrived intermixed with other cars was sufficient to place Claimant on constructive notice not to hump them. In light of all the foregoing we are compelled to hold that there is not substantial evidence on this record to support Carrier's conclusion that Claimant negligently caused the derailment. Accordingly, we have no recourse but to sustain the claim.

We are cognizant of Rule 4-G-1 (k) of the applicable Agreement and consistent therewith hold that any compensation due Claimant as a result of his disqualification shall comprise the difference, if any, between the amount of money he earned working as a Trainman since August 10, 1972 and the amount he would have earned as a yardmaster but for his disqualification.

FINDINGS:

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

The carrier and the employe 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 were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained to the extend indicated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1975.