Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3382
FOURTH DIVISION Docket No. 3350

Referee Irwin M. Lieberman

PARTIES TO DISPUTE: Railroad Yardmasters of America

Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

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

SYSTEM DOCKET 560
EASTERN REGION - NEW JERSEY DIVISION CASE 3/75

An Appeal from the disqualification of Yardmaster P. J. Santopietro at Waverly Yard, on December 11, 1974. Request that he be restored as a Yardmaster with all rights unimpaired and paid for all time lost.

OPINION OF BOARD: Claimant was disqualified by Carrier for permitting an early quit of a train crew under his supervision. Claimant had been in the position of Yardmaster for approximately twenty-one months prior to his disqualification.

Initially, Petitioner argues that the Carrier committed an error in the handling of the Claim. It is argued that Claimant's immediate supervisor, the Terminal Superintendent, to whom the appeal under Rule 6-A-1 was addressed, did not reply to that appeal and in his place the response was from the Assistant Superintendent. Rule 6-A-1 provides, in pertinent part:

> "When it is considered that an injustice has been done with respect to any matter arising under this Agreement, the Yardmaster affected ... may within ten (10) days present the case, in writing to the Yardmaster's immediate supervisor. If the decision of such supervisor which shall be in writing, is unsatisfactory, such decision may then be appealed by the Yardmaster affected...."

Carrier argues that the Trainmaster was a witness at the hearing and was also the charging party and for that reason was precluded from rendering a decision as to the guilt or innocence of the Claimant. Carrier also contends that even if the Trainmaster was required by the rules to render the decision, there is no penalty provided by the rule supra, as compared to the penalty provided specifically in Rule 4-G-1 for non-compliance.

It is obvious that Claimant's rights would have been prejudiced if the Trainmaster had rendered the decision under Rule 6-A-1, but such was not the case in the handling herein. In the interest of equity and due process, even with a non-mandatory disciplinary process such as that in this dispute, Carrier's point is well taken: when a Carrier officer appears as a witness against a Claimant, he may not thereafter make a decision or reply at any level of the appellate process. Since that principle was followed in this dispute and since Claimant's position was not prejudiced by the appellate response, Petitioner's procedural argument is not persuasive. (Also see Awards 1830 and 3104).

With respect to the merits, it is admitted that Claimant did indeed permit an early quit of one hour (with a twenty minute lunch period having been passed by the crew). The only significant defense raised by the Organization is that such early quits have long been the practice on this property and are condoned by management. The record is totally barren of any evidence in support of this assertion and for that reason the argument fails. We have dealt with this identical problem on a number of previous occasions (see Awards 2215 and 2922 for example). In Award 2997 we said:

> "In light of claimant's admission that he allowed the crew an early quit we believe his responsibility for this action is well established. It is certainly part of a yardmaster's duties that he see that employees under his jurisdiction work the full tour of duty they are scheduled to work. It is irrelevant that in the past on this property crews have been allowed to go home early when their work was completed. Claimant was without authority to allow the crew to quite early and his responsibility for this is undisputed."

Similarly herein there is no question but that Claimant did not have the authority to release the crew early. In fact admittedly he had been warned and disciplined for this very act previously during his short tenure as a Yardmaster. There is no basis for disturbing the discipline imposed.

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 denied.

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 6th day of October 1976.