

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Referee Robert W. McAllister

Award Number 4077  
Docket Number 4119

*PARTIES TO DISPUTE:* The American Railway and Airway Supervisors Association: A Division of BRAC

National Railroad Passenger Corporation

*STATEMENT OF CLAIM:* It is the Claim and request of the Petitioning Organization that:

1. Respondent Carrier violated the Agreement, particularly Rule 19, when it disciplined Mr. W. P. Gillespie, Foreman, Sunnyside Yard, in the form of a Sixty (60) Day Suspension as a result of an Investigation held on August 25, 1981, in that such action was unjust, unwarranted, and in abuse of Carrier's discretion.
2. Carrier be required to rescind such discipline, reimbursing Mr. Gillespie for all Monetary Loss sustained by him including any Overtime which may have accrued to him during the Suspension, as a result of Carrier's wrongful action and that all mention of this action be expunged from his record.

*OPINION OF BOARD:* The Claimant entered the Carrier's service on February 11, 1976. On the date the incident occurred, August 17, 1981, Claimant held the position of foreman at Sunnyside Yard, New York. As a result of the incident, the Claimant was informed he was to appear for an investigation in connection with charged violation of the General Rules of Conduct, Rule "I" and Rule "K". Specifically, the Carrier charged the Claimant "left the service unprotected and that you refused a direct order from your general foreman." The investigation was held, and the Claimant was assessed a sixty (60) day suspension.

There were no witnesses to the incident between the Claimant and the general foreman. While the testimony of the two participants is contradictory, it is not denied the Claimant left the property. As this Board has repeatedly stated, the Hearing Officer, as the trier of facts, is looked upon as being the only appropriate person to determine credibility and to weigh conflicting evidence. We find the conduct of the Hearing Officer and his determinations to be a reasonable exercise of the authority vested in the trier of facts. The record contains sufficient evidence to sustain the Carrier's action.

*FINDINGS:*

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

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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:

  
Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.