

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 4409
Docket Number 4270

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Metro-North Commuter Railroad

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

The record of T. E. McNulty be cleared and that he be paid for all time lost (30 days actual suspension) pursuant to Rule 6-A2(d).

OPINION On January 28, 1982, the Claimant was notified to attend
OF BOARD: an investigation to develop the facts and to determine his responsibility, if any, for his alleged sleeping while on duty as a Yardmaster at approximately 4:45 A.M. and again at 5:55 A.M. despite being instructed to stay awake. The Claimant was also charged with failure to leave an adequate turnover for the following Yardmaster. The investigation regarding these charges was held on February 22, 1982. Following that investigation, the Carrier concluded that the Claimant was guilty of the charges preferred against him and it therefore assessed him a thirty (30) day actual suspension.

It is the Organization's contention that the Claimant was denied a fair and impartial hearing since the charges against him were not specific. The Organization further contends that the Carrier violated Agreement Rule 6-A-1(b) when it failed to submit a copy of the hearing transcript either to the Claimant or to his representative. Finally, the Organization asserts that the Carrier failed to produce substantial evidence of the Claimant's guilt of the charges against him. For all these reasons, the Organization requested that the discipline assessed the Claimant be set aside and that he be compensated for all time lost.

It is undisputed that the burden rests with the Carrier to prove that the 30 day suspension issued the Claimant was supported by substantial evidence of probative value. It is the responsibility of this Division to review the evidence presented at the Claimant's February 22, 1982 investigation to determine whether the Carrier has sustained this burden imposed on it. However, for some unexplained reason, the Carrier has failed to furnish us a transcript of that investigation. Absent such a record, this Division has absolutely no way of determining whether the Carrier's imposition of discipline was, in fact, supported by substantial and probative evidence. In our judgment, failure to submit a transcript of the February 22, 1982 investigation was a fatal flaw on the Carrier's part and is dispositive of the claim now before us. Accordingly, this Division finds that the Carrier has not sustained the burden imposed on it and the instant claim must be sustained as a result.

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 Employes 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.

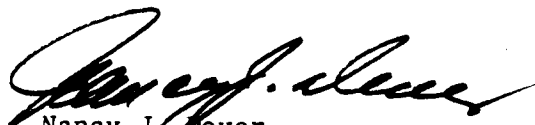
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Bever
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1986.