

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** "Ex parte submission of the Brotherhood of Railroad Trainmen in claim of Steward M. I. Jacobi for refund of \$82.54, amount taken by Carrier from his pay check, February 26, 1938, to cover funds lost in robbery of Dining Car No. 10123 at Los Angeles, December 25, 1937."

**EMPLOYEES' STATEMENT OF FACTS:** "Steward Jacobi arrived Los Angeles in extra service with Dining Car No. 10123 at 9:20 A. M., December 25, 1937. The amount of \$82.54 was left locked in the bar while Mr. Jacobi made inquiry as to his next movement with Diner 10123, and upon being ordered to deadhead on Train No. 25, departing 6:00 P. M., he returned to the car to obtain the money for remittance to the Carrier at which time the robbery was discovered. The loss of the money was reported immediately to the railroad police department and also the Commissary Superintendent at Los Angeles.

"On February 26, 1938, regular semi-monthly pay day, Steward Jacobi's pay check was withheld from him, and as this did not equal in amount of \$82.54 the balance was deducted from the next succeeding check payable March 10, 1938.

"Claim was made for refund of the \$82.54, which subsequently was declined."

**POSITION OF EMPLOYEES:** "This case arises under Rule 20 of Agreement covering pay and regulations for Dining Car Stewards, reading:

**'Investigations and Discipline**

**Rule 20.**

(a) When a Steward is taken from his run for investigation of an alleged offense, he shall, if found innocent, be paid for net wage loss. No discipline will be assessed without a thorough investigation; such investigation ordinarily to be held within five (5) days from date of removal from service.

(b) Where a formal investigation is held, the Steward under investigation will be entitled to representation by the Local Chairman of his organization or by any employe in service on the Steward's seniority roster, or both.

(c) Stewards will be given written notice of investigation, and the subject to be investigated, together with the time and place to be held. Message will be considered written notice.

proved that a burglary had been committed. We discuss the evidence as tending to show no such burglary or theft, solely for the purpose of demonstrating to the Division that the carrier's officers were not unreasonable or arbitrary in refusing, as a matter of discretion, to accept claimant's proffered excuse, and relieve him of his duty to account for and pay over the moneys entrusted to him.

#### **"CONCLUSION**

"There is not the slightest shadow of merit attaching to this claim. The moneys were lost, solely because of either the act or the active default of the claimant; the loss could not have occurred if he had followed long standing and well understood instructions. There is nothing to indicate that any outside agency had anything to do with the loss. Claimant was therefore properly held responsible and required to make good the shortage; and the carrier's officers did not abuse their discretion when they declined, in view of the absence of any substantial evidence indicating a burglary or theft during the claimant's absence, to relieve him of his responsibility.

"Considered as a claim predicated upon an asserted failure to comply with the provisions of the Stewards' Agreement, the case stands absolutely without any justification from the claimant's standpoint. We ask the Division to reach conclusions in accordance with those suggested here, and to deny the claim summarily."

There is in existence an agreement between the parties bearing effective date of July 1, 1936.

**OPINION OF BOARD:** The facts do not warrant sustaining the claim.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record discloses no ground for disturbing the action of the Carrier.

#### **AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1940.