

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Request that James G. Ebert, Steward, Pennsylvania Railroad, be reinstated and paid for all time lost and his record cleared account of being dismissed without cause under Regulation 6-A-1 of current agreement effective January 16th, 1936, and Regulation 7-B-1 effective January 16th, 1936.

OPINION OF BOARD: James G. Ebert, the claimant, was employed as a Dining Car Steward and on special assignment in the Coach Lunch Supply Room in the Pennsylvania Station in New York City. His duties included supervision of issuing food supplies to employes selling such supplies to passengers on trains and the collection of funds for such supplies.

After a trial on written charges that he had mishandled Company supplies and appropriated Company funds he was dismissed.

This claim is that Ebert was not given a "fair and impartial trial" as required by Rule 6-A-1 of the Current Agreement and that he should therefore be reinstated and paid for loss of time pursuant to Rule 7-B-1.

The record of the trial is voluminous and a digest of all of the evidence heard could serve no good purpose.

The evidence did clearly establish that some one in the Coach Lunch Supply Room gave an employe, Sealy, a Coach Lunch Waiter, an order of sandwiches and milk of the value of \$10.00; that while the order was entered on Sealy's copy of the coach lunch order slip, it was not entered on the original copy which was kept in the Supply Room; that Sealy sold the merchandise and did not account to the Company for the proceeds of the sales; and that by reason of the order not having been entered on the original order slip there was nothing in the Company's records in the Supply Room to show that Sealy owed the Company for the merchandise.

Sealy finally admitted his part in this fraud on the Company. He said that it was Ebert who had furnished him the merchandise without making an entry thereof on the Company's records; that he and Ebert had been doing this for some time and splitting the proceeds of the sale of the merchandise; and that on the day in question he had dropped Ebert's part of the proceeds in the drawer of the desk at which Ebert was sitting.

Pantryman, Maurice J. Shy, who was working in the Supply Room at the time testified that he saw Ebert give Sealy the order of merchandise and that he saw Sealy drop money in the drawer of the desk at which Ebert was working.

Ebert denied giving Sealy the order of merchandise and also denied that Sealy dropped any money in the desk at which he, Ebert, was working.

James J. Scardino, a clerk in the Coach Lunch Room, testified that he was sitting at the desk with Ebert at the time in question and that Sealy did not drop anything in the drawer of the desk.

There was much more testimony, some of it indirectly supporting Ebert's story, and some of it indirectly supporting Sealy's story.

We cannot say that the action of the representatives of the Company in this case was arbitrary, capricious or unreasonable.

The chief complaint of the Brotherhood seems to be that testimony of Sealy should not have been considered by the company representatives in arriving at their decision. The Brotherhood points out that Sealy admittedly was a "thief", and also that in his testimony he admitted that when he was first accused he "lied" to the Company representatives.

It is now admitted by all, however, that Sealy was guilty as charged and that he had to have the help of one of the men on the other side of the counter in the Lunch Room. Admittedly Ebert was in a position where he could have been the one who helped Sealy.

No reason has been suggested as to why Sealy would have implicated Ebert if Ebert had not been the accomplice.

Heretofore this Division has held that it is not the function of this Division in such a case as this "to pass upon the credibility of witnesses or to weigh the evidence". Awards No. 2766 and No. 3112.

We cannot say here that the action of the Carrier was "so clearly wrong as to amount to an abuse of discretion".

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 Employees involved in this dispute are respectively carrier and employees 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 record does not disclose such facts as would justify this Division in setting aside the action of the Carrier.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.