

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

E. T. Mitchell, Ticket Clerk, 30th Street Station, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from August 11, 1947, until adjusted. (Docket E-459.)

OPINION OF BOARD: Many awards of this Board state the rule that the Board should not without deep consideration set aside disciplinary action taken by Management. These awards also recognize, however, the responsibility imposed upon the Board to intervene whenever the evidence clearly indicates that Management has abused sound discretion, assessed unwarranted discipline or acted arbitrarily and capriciously without sufficient evidence or just cause. After careful consideration of the Record in this case the Board concludes that the Carrier has so acted here.

Claimant was discharged for his failure to pay an alleged shortage of \$5.66 in his account. The Record fails to establish that there actually was a shortage of this amount. The ticket revenue at the ticket office on the days in question did not indicate that the alleged overcharges had been in fact made. During the trial Claimant was asked whether he had anything further to say, to which question he answered as follows:

"A. Yes Sir. I feel I should enter into the record that I have never refused to pay an honest shortage and I did fail to pay either of these debit shortages in my account because these shortages are not honest, therefore I have properly declined to pay them."

The Carrier took the word of two passengers who claimed that they had paid for a ticket to a certain destination and were issued a ticket for a different destination; as has been seen, the ticket office revenues give reason to investigate the statements of the passengers further. The Carrier used the charges of these passengers as the basis of the assertion that there was a shortage, yet these persons were not present during the investigation nor at the trial; Claimant was denied the right to face his accusers. The transcript of the trial indicates that never had the Ticket Clerks agreed that Ticket Clerks would be held accountable for a passenger's statement; certainly it was never agreed that the passenger's word would be taken as final on its face. The great weight that the Carrier gave to the statements of the passengers in deciding that there was a shortage is made clear when it is seen that very little reliance was placed upon the auditors' reports in establishing the alleged shortage; this can be seen from the following statement of the Carrier:

"* * * As the Carrier has shown in its Submission, the records of the auditor are not important in this case. An employe could have a perfect record so far as the auditors' reports were concerned even though he might daily over-charge patrons for tickets and then pocket the amount of the over-charge. In the present case no charge of dishonesty has been made against Mitchell, but this illustration illustrates the futility of trying to prove the exact amount of shortages by use of the auditors' records."

Thus it is seen that the auditors' records could not be relied upon to establish the alleged shortage; it has been seen that the revenues at the ticket office as shown by Claimant's account did not show a shortage; this leaves only the word of the passengers to establish a shortage, yet Claimant was never given a chance to face the accusing passengers. The alleged shortage was established only by testimony which was never subjected to cross-examination. It should be noted, also, that throughout the trial the Carrier refused to furnish to Claimant a copy of the auditors' report for the months in question.

Claimant has at least twenty-one (21) years of service with the Carrier, and according to the Record his integrity and honesty had never been questioned before. The Record also indicates that Claimant had never before refused to settle his accounts with the Carrier, and that it was only because of the circumstances involved that the Claimant took exception to paying the \$5.66 without some substantial evidence that he had made a mistake in selling the two tickets in question. The Board does not believe that Claimant's objection was a matter of dollars and cents, particularly since the amount involved was so small, but rather that Claimant's objection was based on a fear that a stigma would be placed against his record for honesty and integrity; the Board also believes that Claimant was reasonable in this fear. True, employes should obey the reasonable orders of the Carrier. If an employe feels that he has been wronged by being required to obey such an order he has a resort to the grievance machinery. But under the circumstances of this case the order of the Carrier was unreasonable and arbitrary, and it is understandable that Claimant should be reluctant to accept the filing of a grievance as a substitute for the wrong which he felt would be done to him if he paid the claimed shortage. Actually, at the time of the service of notice of discipline upon Claimant he offered to pay the claimed shortage under protest, but the Carrier rejected the offer.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier's assessment of discipline was imposed arbitrarily and without just cause.

AWARD

That Claimant shall be reinstated with seniority rights unimpaired and be paid for time lost less earnings from other employment in the interim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 17th day of February, 1949.