

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, 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:

Jerome Barnett, Ticket Clerk, Trenton, New Jersey, be returned to service with all rights unimpaired and be compensated for all monetary loss sustained dating from March 4, 1950, until adjusted. (Docket N-280.)

OPINION OF BOARD: This Claimant, a ticket clerk, was charged with "Falsification of record of Federal Transportation Tax collected in connection with the sale of Interline Tickets and misappropriation of Federal Transportation Tax monies, at Trenton, New Jersey, on various dates 1949 and 1950." The Claimant was held out of service pending the trial and subsequent decision of dismissal.

The record fails to bear out any contention that the Carrier acted wrongfully in holding the Claimant out of service prior to his trial. Considering the offense with which the Claimant was charged, we believe that the Carrier acted within its rights under the provisions of Rule 6-A-1 (b). The amount of money involved was not large, but we do not look to the total monies involved in this case as our sole basis for determining whether this was a major offense. The nature of the offense should be the determining factor, we believe. This particular offense, as charged, amounted to a breach of trust. The Carrier, having reasonable grounds for their charges, should not be required to continue an employe in a position of trust prior to his trial.

This Claimant was among twelve ticket clerks at Trenton, who were held out of service under Rule 6-A-1 (b) for alleged irregularities in the tax totals. It appears in this record that others were disciplined, but we are only concerned with the matter of this particular Claimant. The record does not provide proof of a conspiracy among the twelve employes.

This case boils down to the proposition of whether the Claimant was found guilty by arbitrary action of the Carrier.

The record bares the fact of several discrepancies, evidenced by certain work sheet exhibits.

This Board should not attempt to weigh the evidence of the investigation. As has been held before, we should not interfere with disciplinary matters in the absence of a showing that the Carrier's action was arbitrary, capricious, or without basis. In other words, when there is substantial evidence, if believed, to uphold the decision of the Carrier, we should not substitute our judgment for that of the hearing officer.

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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1952.