

Award No. 6108  
Docket No. CL-5952

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Fred W. Messmore, Referee**

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**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:

Paul J. Plumeri, 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-288.)

**OPINION OF BOARD:** This is a discipline case. The record shows that Paul J. Plumeri entered the service of the Carrier in 1918 as a Ticket Clerk. He worked in the capacity of a relief Ticket Clerk and Head Clerk at the Trenton Ticket Office, Trenton, New Jersey.

He was charged as follows: Falsification of record of Federal Transportation Tax collected in connection with sale of Interline Tickets and misappropriation of Federal Transportation Tax monies at Trenton, New Jersey, on various dates 1949 and 1950.

The claim of the System Committee of the Brotherhood is that Claimant be returned to service with all rights unimpaired and compensated for all monetary loss sustained, dating from March 4, 1950, until adjusted.

The traveling auditors made a routine audit at the Trenton Passenger Station incidental to transfer of accounts to a newly appointed Agent. During the course of the audit certain inaccuracies were discovered with respect to reporting of Federal Transportation Tax on interline ticket sales. Discovery of these inaccuracies prompted a complete audit of each ticket clerk's work sheets.

An examination of the accounts of Plumeri for the period of March 1949 to February 1950, showed a shortage in the reported amount of tax receipts on Interline ticket sales amounting to \$373.96.

In a letter dated March 4, 1950, the Agent advised Plumeri that he was being held out of service pending trial and decision connected with—then the reason is stated which conforms to the charge heretofore stated. This action

was in compliance with Rule 6-A-1 (b) "When a major offense has been committed an employe suspected by Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision."

On April 27, 1950, Claimant Plumeri received notice of discipline for offense occurring, which was dismissal from service.

The Claimant progressed the claim on the property through the proper channels. The General Manager, the highest designated officer to whom appeals for the redress of grievances may be made under date of October 20, 1950, denied the claim. The claim is properly before this Board for decision.

The Employes present the following issues for determination:

1. Whether the oral and documentary evidence adduced at the trial indicates a deliberate falsification of records in view of the fact that the alleged alterations of the tax figures were not in the handwriting of the Claimant.

2. Whether the Claimant received a fair and impartial trial.

3. A review of the disciplinary action taken by the Carrier.

Primarily, the rule involved is Rule 6-A-1 (a), "Employes will not be suspended nor dismissed without a fair and impartial trial."

The formula to be followed as to the manner of accounting as shown by the record, is as follows: " \* \* Under the prescribed accounting procedure on the Pennsylvania Railroad, tax collected on local tickets is generally entered in the same report to the Auditor as covers the local rail tickets, and the amount of the tax so entered is included in the total on the balance sheet as chargeable to the office."

"Interline ticket sales involving travel over more than one Carrier are reported in different form and the tax is not shown on the ticket report forwarded to the Auditor. Each ticket seller reports the tax collected on interline tickets on his daily work sheet, which totals are accumulated and reported as a lump sum total to the Auditor on the balance sheet at the end of each month."

It is apparent by the manner of accounting, insofar as the Federal tax is concerned on interline ticket sales, individual ticket sellers were able to manipulate these monies by entering erroneous amounts of tax in the tax column, or by short adding the total tax column on the interline work sheet.

It would serve no useful purpose to detail the audit as it appears in the record, which has been examined. It is apparent from the record that on 122 separate days within a period of a little less than one year, the Claimant's Federal Tax Record Tour Sheet disclosed discrepancies and shortages. In 121 instances the mistakes made favored the Claimant. It also appears that most of, if not all of the mistakes were made in the same tax column, while the adjacent column designated "Interline Ticket Sales" seemed to be correct. In some instances certain summary figures and calculations of debits and credits he claimed were not in his handwriting, but upon interrogation he acknowledged most of the figures on the tour sheets were his.

On April 14, 1950, the Claimant paid \$173.49, which constitutes an acknowledgment of shortages to that extent. The balance of the alleged shortage was paid by a bonding company.

The record further reflects that the only person who would benefit by the discrepancies found in the accounting would be the Claimant.

There is some evidence in the record that the business of the office was handled in an incompetent and slovenly manner, and there was a lack of discipline on the part of the Agent, the supervisory officer in charge, that affected the employes not properly performing their duties.

It must be remembered that this Claimant was an experienced ticket clerk. He had been in the employment of this Carrier for approximately 32 years. It seems incredible, from an examination of the record, that the mistakes and discrepancies which appear in his accounts could possibly be to the extent as shown in the record. We find no adequate defense in the record excusing him under the circumstances. The mere fact that the office was not properly run and that the Agent was lax in his duties in the matter of supervision constitutes no excuse for this employe to forget the exactness of the position which he held. There is a positive duty laid on any person who collects money for tickets to also collect and account for the Federal tax monies.

One of the questions presented is that the Passenger Agent, F. L. Rhinehart, acted in the capacity of a prosecutor and judge, that is, that he took part in the preliminary investigation and conducted the trial. While it might be advisable as well as desirable to have a neutral party to conduct an important investigation such as the one here involved, the rules do not so provide, and until the parties agree to such procedure this Division has no power or authority to require it. To the same effect, see Award 5701. We find nothing prejudicial in the manner in which the preliminary investigation was carried on, nor in the conduct of the trial. No substantial right of this Claimant was affected.

The conduct of a hearing is a disciplinary proceeding and does not require an adherence to all of the attributes of a trial in a criminal proceeding. The Carrier's trial officer represents it in making a decision. It is not a case of the trial officer being both prosecutor and judge. It is a matter of contract compliance in which the trial officer interprets the Agreement in the light of the evidence in the first instance. As some of our Awards point out, disciplinary action is not criminal action, and not governed by the same rules.

As to the proof of the charge, this is purely a question of fact. Under such circumstances in disputes of the character here involved this Division is committed to the doctrine that it is not a proper function of the Board to weigh the evidence, and has repeatedly held, when the evidence is sufficiently substantial and supports the charge, the findings based thereon will not be disturbed. There are several awards of this Division to the same effect. See Awards 2621, 5941.

In reviewing the evidence we were mindful of the previous service of the employe, and doubtless this service was efficient and trustworthy. It must be conceded that it is the prerogative of Management to maintain discipline among its employes and take such steps with respect to matters of that character as will insure honest, loyal and efficient service. The established rule, as we have often said, is that when the Carrier's action with respect to such matters is sustainable by the record, we have no right to disturb it. We find no mitigating or extenuating circumstances to justify a conclusion that the Carrier acted hastily, arbitrarily, or capriciously, but, to the contrary, that the Carrier acted in good faith and did not abuse its discretion.

The accused's long service is the only basis in the record that would tend to mitigate the gravity of his offense. Long service in and of itself does not permit us to substitute our judgment for that of the Carrier. See Award 5026.

The trial was fairly and impartially conducted. The evidence was sufficient to support the assessment of discipline. For the reasons given herein, the claim should be denied.

**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 facts as they appear in the record do not disclose a situation which would justify the Board in modifying or revising the action taken 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 26th day of February, 1953.