

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, 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:

Discipline of suspension, from August 19, 1949, to December 16, 1949, inclusive, imposed upon Bella B. Cyr, Extra Ticket Clerk, Broad Street Suburban Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division, be removed and that she be reimbursed for all monetary loss sustained. (Docket E-797)

OPINION OF BOARD: Claimant Bella B. Cyr requests that discipline of suspension from August 19, 1949, to December 16, 1949, be vacated and that she be reimbursed for all monetary loss sustained.

Prior to and on August 8, 1949, Claimant held position of Extra Ticket Clerk at Broad Street Suburban Station in Philadelphia. Under date of August 19, 1949 she was notified in writing that she was being held out of service under Rule 6-A-1(b) until her future status had been decided by the Superintendent.

Rule 6-A-1(b) reads as follows:

"When a major offense has been committed an employee suspected by the Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision."

Under date of September 6, 1949 Respondent notified Claimant in writing that she was to appear on September 10, 1949 to answer charges arising out of the alleged sale of tickets and failing to account for such sale on August 8, 1949. However, the hearing thereon was not held until September 20, 1949, the same being conducted by W. P. Fogle, Passenger Agent for the Respondent. Under date of November 15, 1949 Claimant was advised over the signatures of the said W. P. Fogle and J. P. Weyrick, Supervising Agent, that she stood dismissed from service.

The Organization appealed from this ruling to the Superintendent; the appeal hearing was held on December 9, 1949. Under date of December 15, 1949 Claimant was advised over the signature of the Superintendent, that the

discipline of discharge was modified to suspension to cover time off. Subsequent denial on January 9, 1950 of claim for time lost account of serving suspension during period in question forms the basis of claim before this Division, as above set out.

The Organization charges the Respondent with undue delay in the processing of this discipline matter on the property and is charged by the Carrier with being dilatory in bringing this matter before the Board. In this connection the contentions of neither party are meritorious. The Investigation Rules contain no provision requiring the initiation or processing of discipline matters (at the initial stage) within any definite period of time. Neither is there a "cut-off" date beyond which the Organization is precluded from bringing appeals to this tribunal.

Rule 6-A-1(b) provides in substance that an employee charged with a major offense may be suspended pending trial and decision; and if, (Rule 7-A-1(d)) after trial and decision, the employee so charged is exonerated, said employee shall be made whole for any wage loss sustained.

Claimant here was charged with "selling tickets and failing to account for the sale thereof on August 8, 1949." This allegation if substantiated at the trial was a "major offense" within the meaning of Rule 6-a-1(b), justifying the holding of Claimant out of service pending trial and decision. While not controlling, it is worthy of note that Respondent's notice of August 8, 1949, to the effect that "you are being held out of service under the provision of Rule 6-A-1(b) * * * until your case is decided by the Superintendent," does not stand four-square with the applicable rule, in that said rule provides:

"* * *, be held out of service pending trial and decision."

The Superintendent was not called upon to render a decision until after an appeal to him (by the Claimant) of an initial adverse decision. Thus the notice of suspension in itself presupposed a finding of "guilty as charged."

The sale of tickets and failure to report the sale of same involves embezzlement, fraud and defalcation.

Here the Carrier states that the Claimant was not charged with manipulating or falsifying records, and was not charged or suspected of dishonesty either prior to or after the trial.

Carrier here has for a long period of time maintained an "over and short account" for ticket sellers. In the past employees have paid into this account sums to cover minor accounting discrepancies. The record here indicates that Respondent has accepted, or rather the Claimant was permitted to replace into said account the shortage here in the amount of \$22.18.

It is well settled by numerous Awards of this Division that disciplinary action of a Carrier will not be disturbed if—(1)—the investigation rules have been followed;—(2)—the action taken is neither arbitrary nor capricious;—(3)—the penalty invoked is not, in the premises, excessive and unreasonable.

Claimant here had a full and impartial hearing and while there is insufficient showing of arbitrary or capricious action, the Board is of the opinion, and so finds and holds, that the penalty invoked is unjust and unreasonable. There is no evidence of record to indicate that Claimant was guilty of selling tickets and failing to account for sale of same, and since Respondent states that Claimant was not charged with manipulating and falsifying records and was not suspected of dishonesty, we can find no justification or basis for the suspension here, and the discipline of suspension should be and the same is hereby removed. The Claimant should be made whole for any monetary loss sustained from August 19, 1949 to December 16, 1949, provided, however, that such reimbursement shall not include the sum of \$22.18 paid into the "over and short account" by the Claimant.

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 Employee involved in this dispute are respectively Carrier and Employee 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 there was no justification for the suspension of Claimant, and that the discipline of suspension should be removed and the Claimant paid for any wage loss sustained in accordance with the above opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1953.