

Award No. 6536
Docket No. CL-6618

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES
THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of Pete Williams, Red Cap employed by the Cincinnati Union Terminal Company, against whom discipline in the form of a five day suspension was levied on a charge of "mishandling of baggage believed stolen and just recovered, also review of your record."

The Carrier erred in assessing discipline against Mr. Williams in that its charge was vague and not proved at the investigation. Claim is that Mr. Williams' record be cleared of this charge and that he be reimbursed for such time as he has lost because of the Carrier's arbitrary action.

OPINION OF BOARD: On the morning of December 29, 1952, the Claimant was on duty at the Union Terminal in Cincinnati and about 8:35 A.M. undertook to handle a bag for a passenger, a Mr. Crum, who was bound for Chicago on New York Central Train No. 3. When this passenger and the Claimant went to the tracks they found that train had gone, and Claimant suggested that passenger take New York Central Train No. 415 which left Cincinnati at 9:10 A.M.

Meanwhile Claimant says he put the bag in the Red Caps' booth and proceeded to handle bags for other passengers, pending departure of New York Central Train No. 415. Among passengers serviced during this interim were some bound for St. Louis on B&O Train No. 3. When Claimant returned to the booth he discovered that Crum's bag was gone. (In addition to the bag in question, Crum had also given Claimant his shaving kit which was still there.) He had reported the missing bag to the Red Cap Captain before servicing the passengers on B&O Train No. 3. The bag was not found prior to Crum's departure for Chicago at 9:30 but turned up later in St. Louis having been put on the B&O Train No. 3, and was in due course returned to Passenger Crum.

The important question in the case, of course, is how did the bag get on the St. Louis train? The Carrier says "Consequently the only conclusion to be drawn from the evidence is that Claimant placed missing bag on the B&O Train No. 3 in error."

Employes contend that the Carrier violated Rule 11, Discipline, which reads as follows:

"No employe who has established seniority rights as provided in Rule 3 shall be disciplined or dismissed without investigation and a fair hearing by the designated officer in charge, but suspension in proper cases, pending a hearing which shall be held within seven (7) days, may be made.

"At a reasonable time prior to the hearing employe shall be apprised of the precise charge against him in writing. Employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be at hearing and represented by counsel of his choosing. A decision will be rendered within a reasonable time."

in that the charge was vague and not proved at the investigation.

As to the vagueness of the charge, that portion of it which reads "also review your record" is certainly so, but we think it immaterial in this case, even though some reference was made at the hearing to Claimant's having been absent several times, (twice, according to Claimant).

As far as Claimant was concerned there was no vagueness in that portion of the charge which reads "mishandling of baggage believed stolen and just recovered." No one knew better than Claimant what baggage was involved, because he had given a detailed written statement concerning it to the Carrier on January 1, 1953. The only purpose of the rule involved is to inform the accused of what he is charged with, so that he may offer any defense he may have to the charge. He had all that information here.

While Claimant specifically denied that he put the bag on B&O Train No. 3, the fact remains that it was on that train, and the possibility of the Claimant's having put it on that train is indicated by the statement of his representative at the hearing when he requested a dismissal of the case "with the thought in mind that in the future every precautionary measure will be taken to see that this mishap does not reoccur."

While the evidence is circumstantial and conflicting we cannot say as a matter of law that the Carrier was not justified in reaching its conclusion following the hearing. There is no doubt that Mr. Crum's bag was mishandled (since it was not stolen) and that Claimant had some part in it, because the record does not show that anyone else had physical control over it. He could have been mistaken about putting it in the Red Cap booth.

We think the record justifies the brief suspension and that 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 Employe involved in this dispute are respectively Carrier and Employe 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 did not violate the current agreement as contended by the Claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.