

Award No. 8495
Docket No. CL-7594

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY SYSTEM

STATEMENT OF CLAIM: The discipline applied to Mr. Ernest Jackson, March 15, 1955 by the Chicago and Northwestern Railway System, is excessive, unwarranted, unreasonable and unjust, and does not properly weigh all the pertinent factors.

Further, that Mr. Jackson be returned to service with vacation, retirement and pass rights unimpaired.

OPINION OF BOARD: This is a discipline case.

The record discloses that the employee Ernest Jackson on March 12, 1955 had a clear and unblemished record of 30 years with the Chicago and Northwestern Railway System. On that day, while engaged in transporting passenger baggage, he received a piece of luggage from a lady (a Nun) without placing his baggage check on it, and delivered the baggage to the same lady at the taxi cab dock, receiving from the lady 15¢, and at which time he was apprehended by other agents of the company and his period of free and unhampered decision ended. Thereafter, Usher Jackson destroyed a baggage check which would have the effect of making him account to the Company for 25¢ in lieu thereof.

At the time of the above act, the practice in regard to handling of passenger baggage was that all such baggage handled by an Usher had a baggage check or tag placed on the same, which by so doing compelled the Usher to account to the Company at the rate of 25¢ for each tag or check so used. This was the method used to compel payment and insure revenue, and was so understood by all.

The examination of witnesses produced no reference to a rule permitting the employee to carry bags without a charge. However, the answer is patent, and there need be no such rule. It is necessary to have baggage handled at stations or the general patronage would decline. This would be a loss to Organizations, Carriers and the public. The system in use here contemplated the Railroad would be compensated at the rate of 25¢ per piece and offset wages paid. This was a business opportunity, and the actions of the em-

ploye here deprived the company of this opportunity. If the bag had been carried without charge it would have been a theft of 25¢. This would have been similar to carrying passengers on the Railroad without charge. Such discretion was not open to the employe and he is at fault. If he wanted to make the gift of free service, he could have done so by cutting the baggage check first (thus making him account to the company) and then carrying the bag. This he did not do, but it is clear his intention was to make the company bear the charge and thus defraud it. There is no significance that a baggage check was cut later and was paid for by the employe from the 15¢ tip plus money out of his own pocket. The employe did not refuse the 15¢ tip when offered. There is no question of an emergency or mitigating circumstances in regard to guilt.

Dismissal is a hard and unusual punishment, the extreme that can be given by the Carrier. This is not an error of judgment but one of integrity. Integrity like fidelity in marriage either exists or it does not. There are no degrees. The Claimant with 30 years of service has no greater degree of latitude to violate his integrity to the Carrier than a spouse with 30 years of marriage can claim leniency for breach of fidelity. This Board has frequently denied itself the right to exercise managerial discretion. This is a matter for managerial discretion on which the Carrier has exercised its considered judgment. The claim should be denied in accordance with the Opinion.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1958.