

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Howard A. Johnson, 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:

(a) The Carrier violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-A-1 and 6-A-1, when it dismissed Lois Reading, Ticket Seller, Trenton Ticket Office, Trenton, New Jersey, New York Region, on September 17, 1957, without good and sufficient cause.

(b) Lois Reading be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from September 17, 1957, until adjusted. (Docket 412.)

**OPINION OF BOARD:** The Employees' position is: (1) that the Carrier violated the Agreement when it dismissed Claimant Reading from its service "without conclusive proof" that she was involved in irregularities; (2) that "the transcript of the trial record reflects collusion, intimidation and persecution, which is tantamount to character assassination"; and (3) that the Carrier "did not follow its prescribed course" but "pursued a fundamentally wrong basis" in discharging Claimant instead of giving her the benefit of Rule 2-A-3(c), which provides as follows:

"When conditions develop so that an employe cannot satisfactorily perform the assigned work, he will be permitted to exercise seniority under Rule 3-C-1, subject to agreement between the Management and the Division Chairman."

No authority is offered for the first proposition, that conclusive proof is necessary to sustain the imposition of discipline. On the contrary, the rule is well established that in disciplinary cases it is not the province of the Board to weigh conflicting evidence or substitute its judgment for that of the Carrier (Awards 7020, 6866, 5427 and many others), and that even though evidence is denied or disputed the Board will not interfere with disciplinary action based

on substantial competent evidence (Awards 9178, 9046, 9035, 8888, 8832, 8808 and others). Thus we are not in a position to consider whether the evidence is conclusive, or even to decide whether the weight of the evidence sustains the action appealed from. Our authority in that respect is limited to the question whether there is such a lack of any substantial evidence as to justify the conclusion that the Carrier's action was arbitrary, capricious, without just cause, or based on doubt or speculation.

The record shows six separate instances in which witnesses testified to overcharges by Claimant. There were some variations in their description of Claimant, but in each such instance she identified her own handwriting on the ticket or on her records of the transaction. In each instance a smaller amount was shown on her records than was charged the passenger. In at least one instance the larger amount was shown on the ticket; in some instances the line for the amount was erroneously left blank, and in some the correct amount was shown on the ticket, but the passenger did not discover the overcharge until after she had left the window. Two overcharges were discovered on applications for refunds of unused tickets, two were found on complaint of passengers, and two were discovered by undercover agents. Claimant did not admit the errors or offenses but had no explanation to offer.

The evidence was not controverted and no reasons are shown why it was not worthy of belief. Consequently it seems quite clear that the action in question was not taken without adequate evidence.

No indication of collusion, intimidation, persecution or character assassination has been pointed out or found in the record, and Claimant's representative stated that the investigation had been conducted in a fair and impartial manner.

The third proposition stated in the Employees' position is based upon a letter from Passenger Agent Gaynor stating, because of repeated shortages during the period from January 1 to May 20, 1957, totalling \$158.68, which Claimant was required to make good, that "if your shortages persist \* \* \* I am going to recommend that you will be relieved from your duties as a Ticket Seller and never have a position where you may handle money on the Pennsylvania Railroad." No reference was made to these overcharges, three of which had not yet occurred. In any event, nothing has been suggested or found in the record or rules which would bind either the Carrier or its hearing officer to follow such a recommendation, if made, rather than to impose discipline under the Rules. Consequently we cannot find that the Carrier "did not follow its prescribed course," or that it "pursued a fundamentally wrong basis" in following Discipline Rule 6 rather than Rule 2-A-3(c).

The record does not indicate that Claimant's discharge was without good and sufficient cause, or that the Agreement has been violated.

**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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1960.