

Award No. 11215

Docket No. DC-12502

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Request of Dining Car Steward Frank Sloan, Southern District, that he be reimbursed in the amount of \$118.00 which was stolen from cash drawer of dining car (Lark) during period car was in Los Angeles Yard, June 7, 1959.

EMPLOYES' STATEMENT OF FACTS: On June 7, 1959, claimant was operating as dining car steward on Trains Nos. 75 and 76 (Lark) between Los Angeles and San Francisco. After arrival of Train No. 76 at Los Angeles on the morning of June 7, 1959, claimant remitted his collections and placed change money (silver), amounting to \$118.00 in the cash drawer of diner, locked drawer and left car about 9:30 AM.

During the period between 9:30 AM and 8:15 PM, while car was laying over in Los Angeles, some unknown person forced the cash drawer open and took the \$118.00 therefrom. When claimant opened the drawer during dinner hour (about 8:15 PM), he discovered the loss. He immediately called a Special Agent (Company Police), who boarded the dining car and made an investigation and report. Evidence conclusively indicated that there had been a forcible entry and theft of the funds.

Claimant also filed a report with the Superintendent of Commissary at Los Angeles and he was reimbursed in the amount (\$118.00) at the direction of Mr. N. Dolkart, Superintendent of Commissary; however, the Manager, Dining Car Department at San Francisco, required claimant to make restitution, and claimant returned the \$118.00 to Carrier. Superintendent of Commissary at Los Angeles later wrote to the Manager, Dining Car Department and requested that claimant be reimbursed since dining car stewards on this run work 24 to 26 days per month and, at that time, no instructions or arrangements had been made for them to deposit their change money while laying over at Los Angeles; however, the request was denied.

About two years prior to this theft, claimant had made a request on the Carrier that dining car stewards on the Lark be furnished with deposit bags similar to those which had been in use on some other trains. Claimant had also requested that a hasp and padlock be placed on the cash drawer in order

"(b) A receipt must be given to, or taken from, commissary in all cases of exchange of company's change money. Stewards will be held responsible for any change money furnished to them for which they do not secure receipt, when same is returned to commissary or transferred to another steward." (Emphasis ours.)

and Bulletin No. 19, dated December 1, 1953 (Carrier's Exhibit "F"), with particular attention to Rule 2 therein reading:

"2. Funds are not to be left on car during layover at terminals."

There can be no question that claimant was well aware of the instructions in both Bulletin No. 19 and the Rules and Regulations Governing Service By Dining Car Stewards, which have been in effect for over 5 years and 3 years, respectively, prior to the date of the within case, and in view of the clear language of the above-referred-to rules, there can only be one conclusion: that claimant willfully disregarded the rules contained in Bulletin No. 19 and the Rules and Regulations Governing Service By Dining Car Stewards.

Since the funds were lost solely because of the active default of the claimant to follow long standing and well understood rules, the request stands absolutely without any justification from the claimant's standpoint.

The Board's attention is directed to Awards Nos. 1027 and 4005 on this Division involving similar disputes on carrier's property between carrier and petitioner as recognized herein.

CONCLUSION

Carrier asserts that the dispute in this docket is entirely without merit and requests it be denied, if not dismissed.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations the claims that may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was a dining car steward on Trains Nos. 75 and 76 (Lark) between Los Angeles and San Francisco. On June 7, 1959, when Train No. 76 arrived at Los Angeles, Claimant remitted his collection and left \$118.00 in silver change money in the cash drawer of the dining car. He locked the drawer and left the car about 9:30 A.M. The layover in Los Angeles was from approximately 9:30 A.M. to 8:15 P.M. During that time, while the dining car was in the Mission Yard, it was cleaned and restocked. Yard and commissary employees service the car.

When the Claimant opened the cash drawer in the evening he discovered that the \$118.00 was gone. He immediately reported it to a Special Agent who investigated and found evidence that the cash drawer had been forced open.

The Carrier replaced the stolen \$118.00. Later Carrier required and Claimant made restitution by paying \$118.00 to the Carrier.

Claimant now seeks to be reimbursed in the amount of \$118.00.

Carrier contends that the "claim must be dismissed because it does not constitute a grievance or dispute cognizable by this Board." A number of Awards by this and other Divisions are cited. But none of them are relevant. The facts and circumstances in each are different. It would not be useful to discuss each of them and point out the distinctions. Suffice it to say that this Board had previously accepted and ruled in two disputes where the circumstances were identical with the facts now before us. In Award 1027 (without a Referee) the claim was for reimbursement of \$82.54 which was paid by the employe to the Carrier as restitution for an equal amount stolen from a locked bar in a dining car. Likewise, in Award 4005 (Carter) the claim was for reimbursement of \$311.47 paid by the employe to the Carrier as restitution for an equal amount stolen from the cash drawer of a dining car. We believe that the claim constitutes a grievance within the meaning of the Railway Labor Act.

Employes contend that the Carrier was negligent in not providing the Steward with deposit bags and a place where the change money could be left for safe keeping during the train's layover. They argue that the Claimant had previously requested the Carrier to provide for such deposit of change money and that shortly after the theft, the Carrier did on July 7, 1959, notify all Stewards that lock pouches would be available and that they may deposit them with the Southern Pacific Ticket Office in the Union Station where a receipt, in duplicate, would be issued.

In reply, Carrier contends that Claimant rightfully made restitution of the \$118.00 because he violated Rule 16(g) of the Rules and Regulations Governing Service by Dining Car Stewards and Bulletin No. 19, dated December 1, 1953. Rule 16(g) reads as follows:

"Rule 16-G—Change Money

"(a) Stewards will be provided with a working fund for use in making change. Amounts of change money on hand at the beginning of trip must be shown on Form 630 in 'Debit' section of 'Summary' on line reading 'Change money from last trip'. Change money on hand at end of trip must be shown on Form 630 in 'Credit' section of 'Summary' on line reading 'Change money on hand end of trip'. Stewards must, at all times, have this amount in their possession, in addition to any amounts which may have been collected on the trip and not remitted, and must be prepared to produce same whenever called upon by authorized representative of Dining Car or Accounting Departments. **Change money must not be left on car during layover at terminals.**

"(b) A receipt must be given to, or taken from, commissary in all cases of exchange of company's change money. Stewards will be held responsible for any change money furnished to them for which they do not secure receipt, when same is returned to commissary or transferred to another steward." (Emphasis ours.)

Bulletin No. 19 reads, in part, as follows:

"2. Funds are not to be left on car during layover at terminals."

Both Rule 16 (g) and Bulletin No. 19 are clear. There is no ambiguity in the language and there can be no misunderstanding of the intent. The Claimant was instructed and he is presumed to know that he was not to leave change money in the dining car drawer during a layover. The fact that the \$118.00 was in silver and cumbersome to carry around is no excuse. Neither was there any obligation on the Carrier to provide a place for safe keeping as the Claimant says he requested.

Employees also argue that the claim should be sustained because there was no investigation as required under Rule 20. Paragraph (a) of this Rule reads:

"(a) No steward covered by this agreement will be disciplined or discharged without a fair and impartial formal investigation before a proper officer of the Company. At such investigation he will be entitled to be represented by the local Chairman of his organization, or by a steward of his choosing on his seniority district. Nothing herein restricts suspension in proper cases pending investigation, which shall be prompt, ordinarily within five (5) days."

Claimant was neither disciplined nor discharged. Investigations are required only when either of these is involved. No formal hearing under Rule 20 was required.

For the reasons herein stated we do not believe there is merit to the claim.

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 the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary