

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Dining Car Steward William Deacon for the recovery of \$50.00 which was taken by a passenger while he was in charge of a dining car on a football special operating between Minneapolis, Minnesota and Madison, Wisconsin.

EMPLOYEES' STATEMENT OF FACTS: The Brotherhood of Railroad Trainmen, in accordance with the Railway Labor Act, has an agreement with the Carrier, the C.M.St. P. & P. Railroad Company, governing rates of pay and working conditions of dining car stewards on the C.M.St. P. & P. RR Company. Dining Car Steward William Deacon is employed by the Carrier, the C.M.St. P. & P. RR. Co. and holds seniority in that class of service.

On the date of November 17, 1960, Dining Car Steward William Deacon was performing service for the Carrier, the C.M.St. P. & P. Railroad Company, as a dining car steward on a football special operating between Minneapolis, Minnesota and Madison, Wisconsin. Approximately 300 people were being handled on this train between the points of Minneapolis, Minnesota and Madison, Wisconsin.

On the date of November 17, 1960 and after arriving at Madison, Wisconsin, during the course of a party of eight people leaving the dining car, Steward William Deacon observed that his billfold or wallet, containing approximately \$255.00 was missing. This matter was reported to the police at Madison, Wisconsin immediately. A person who was having his dinner near the steward's desk noted that one person in the party of eight people picked up the billfold of Steward Deacon, and shortly thereafter the party left the diner. The party who was having his dinner who observed this incident, gave the information to Steward Deacon. Dining Car Steward William Deacon subsequently reported the matter to the Carrier Police Department and the dining car inspector, Mr. T. Triggs.

During the time that the report was being made to the Carrier's Police Department and Mr. T. Triggs, the Dining Car Inspector in the station master's office at Madison, Wisconsin, a coach porter, Mr. Hubbard, informed Dining Car Steward William Deacon that he had also seen a man pick up the wallet,

Mr. Triggs as to the amount of money he had in the wallet, Mr. Deacon indicated that he had "\$200.00 or \$300.00 or maybe more, I don't know."

Mr. Deacon admits that he left his wallet unprotected on his desk in the dining car and according to a porter, J. E. Hubbard, it was picked up by one of the passengers.

The Carrier's Police Department ultimately recovered the wallet from a passenger who advised that he never knew he had it and was surprised to find it in a coat he had been wearing on the train.

When recovered the wallet contained \$205.00.

When Mr. Deacon first reported the loss of his wallet he was unable to make any definite statement as to the amount of money he had in his wallet, yet after it had been recovered Mr. Deacon claimed a loss of \$50.00.

When making his reports and remittances to the Carrier, Mr. Deacon claimed a \$50.00 credit which, of course, was not allowed as Stewards are responsible for all monies under their care.

Mr. Deacon was advised by Mr. Ayars, Superintendent, Sleeping and Dining Car Department, that he was expected to make up the \$50.00 he failed to remit and after some time he did make up this shortage.

POSITION OF CARRIER: The instant "claim" has at no time been handled as such on the property in view of which it is the Carrier's position that not having been properly handled on the property in accordance with time limit on claims rule 19 of the currently effective Stewards' Agreement and the Railway Labor Act the instant "claim" is improperly before your Board and, therefore, barred and must be dismissed in its entirety.

Without in any way waiving our position as set forth in the preceding paragraph the Carrier submits that there is absolutely no agreement basis for the instant "claim." There is absolutely no schedule rule or agreement which provides for a monetary "recovery" such as the employees are seeking through the medium of a Board Award in the instant case and the Carrier respectfully requests that this "claim" be denied.

OPINION OF BOARD: On November 17, 1960 Claimant W. Deacon served as Steward in charge of a dining car on a football special operating between Portage and Madison, Wisconsin. Upon arrival at Madison, Deacon reported that his wallet was missing. On November 19 Carrier's Police Lieutenant notified Deacon that the wallet, containing \$205.00 had been recovered.

When Deacon rendered his reports and remittances to Carrier on November 24 he claimed a \$50.00 credit due to theft. This was disallowed on November 30. On December 30 Petitioner's General Chairman E. L. Dirks requested Carrier's General Manager to "investigate this matter and advise that the proper department of the Carrier will recover the \$50.00 from the person responsible for the money." Dirks also noted (1) The man who took the billfold apologized to the Steward and promised to repay the money that was missing but had failed to do so, (2) Claimant was sure that the wallet contained \$255.00 at the time it was taken and had so informed the dining car inspector. On January 30, 1961, General Manager Anderson advised General Chairman Dirks that the Steward (1) was responsible for all Company money in his pocket, (2) was fortunate in recovering the wallet, and (3) had

been careless since "it has been developed that Mr. Deacon left the wallet without protection." In subsequent correspondence Carrier continued to deny Deacon's request for \$50.00.

The Organization contends that (1) since Deacon was on duty and performing service at the time of the incident, Carrier is liable "for the protection of the employe when the act of a felony occurred by a passenger being transported on the Carrier's train"; (2) since Carrier's Police Department was involved, the matter "should have been handled by the Police Department to a conclusion, without loss to the employe." In fact, Petitioner urges, it was incumbent upon Carrier to prosecute the passenger and secure restitution of the loss.

While it is unfortunate that Deacon suffered a loss while in the line of duty, his claim for \$50.00 cannot be sustained. The following considerations are significant in our judgment:

1. There is considerable doubt concerning the exact amount of loss. Although Deacon claims it was \$50.00 Carrier asserts that when he was questioned by Chief Inspector Triggs at Madison, the Steward indicated he had "\$200.00 or \$300.00 or maybe more, I don't know."

2. There was no negligence on Carrier's part to which the loss may be attributed. In fact, in his own description of the incident Deacon explained: ". . . it would take quite a man to refrain from being distracted for a moment, under circumstances such as this particular assignment, and it was through just a one minute distraction that caused me to leave my wallet on top of my desk as I did."

3. The question whether a felony was committed cannot be determined by the Carrier or this Board. That is a matter for the courts. Carrier was under no contractual obligation to institute court proceedings on Deacon's behalf (although he might have done so himself had he so desired).

In sum, since there is no evidence of Carrier responsibility here, and since no contract provision has been violated (or even cited for that matter), this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.