

Award No. 13475
Docket No. CL-13155

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

UNITED TBANSPORT SERVICE EMPLOYES

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: 1. That the Washington Terminal Company violated Article V of the existing agreement in that Claimant **Ellison L. Robbs** ~~was~~ not afforded a fair hearing.

2. That the decision of the company was arbitrary, whimsical and capricious and should be set aside.

3. That the record of said claimant shall be cleared in its entirety of all reference to the instant case.

OPINION OF BOARD: The management's representative had been instructed by his superiors to observe Red Cap operations in the Washington Terminal. On the day involved in this dispute, he allegedly observed the Claimant place 7 pieces of luggage into the trunk of a taxi-cab, remove that portion of the ticket from each piece of luggage, which according to the operating rules of the Company was to remain attached to the luggage, ask for the Customer's portion of the ticket and deposit both in his pockets. This procedure was in violation of that part of Red Cap Rule No. 13 reading "and at the time you accept the job, you are required to attach your red cap check and not remove same." The purpose of this is obviously to prevent the re-sale of the Red Cap Checks.

The incident took place on a Tuesday. Claimant worked Wednesday, was off duty Thursday and Friday, his rest days, and on Saturday was notified in writing of the alleged violation. The letter of notification advised that he was to be tried for a violation of Rule 13 and that at the trial he could be accompanied by representatives of his own choosing. A continuance requested by the Claimant's representative was granted, and trial was conducted at a later date. A decision was rendered by the hearing officer suspending the Claimant for a period of five days. This decision was appealed to the next higher authority, who in this case happened to be the hearing officer himself. The lower decision was approved. It was then appealed further to the highest officer, to whom such appeals are made in accordance with the Agreement between the parties, and was once again affirmed.

The case is before us on the grounds that the Claimant was not afforded a fair trial and that the decision rendered was "arbitrary, whimsical and capri-

cious and should be set aside." A review of the transcript of testimony received at the trial has been made. It reflects the fact **that** Claimant was **accompanied** by two attorneys, and two representatives of the Organization. He **was** given an **opportunity** to testify on his own behalf and his lawyers were **given** the opportunity to cross examine the management representative responsible for the charge. **At** the conclusion of the trial, the Claimant's representatives were asked if they had any comments or criticisms to offer relative to the **manner** in which the trial was conducted, and they replied that they had none.

There was a conflict of testimony between management's representative and the Claimant regarding the essential elements of the violation.

They were the only two witnesses produced, since neither the cab-driver nor the owners of the luggage were known. Basically, the Claimant is objecting to the decision on the **grounds** that the hearing officer placed **more** credence in the management representative than he did in him. **The** trial itself was eminently **fair** and objective. There is no evidence in this record that the management representative had any ulterior motive or deliberately and with malice contrived to harm this Claimant. We are simply confronted with a conflict of testimony. This Board is unable to resolve it. We have **no way** of judging the credibility of the witnesses. We did not observe their conduct and demeanor. The hearing officer did and in consideration of that fact and on the basis of the testimony made his decision. We are unable to find that management has acted in an "arbitrary, whimsical or capricious way," and accordingly will deny the claim.

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 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 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 April **1965**.