

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Daniel Kornblum, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter-in-Charge Lawrence T. Dozier, that he be compensated for net wage loss from October 27, 1963 to November 10, 1963, inclusive, with vacation rights unimpaired, account of Carrier suspending claimant from service during this time in violation of the Agreement and in abuse of its discretion.

**OPINION OF BOARD:** Claimant was suspended for fifteen days without pay for violation of Carrier's Rule N which, in relevant part, provides: "Employees who are careless, negligent, will not be retained in the service". More particularly, the act of neglect charged was that Claimant "failed to properly secure the locker commonly referred to as the Stationery Locker on this car leaving miscellaneous equipment, DC 23 Meal Checks, etc., to pilferage."

Claimant is a Waiter-In-Charge who, at the time of the incident in question, was assigned to Dining Car 412. Admittedly he was familiar with Carrier's Circular Letter No. 1022 which reads in part: "It is the responsibility of the Steward or Waiter-In-Charge of the car to see to it that all of his particular lockers are properly locked and sealed, also inasmuch as those employes are in charge of the car, it is their responsibility to double-check and ascertain as to whether or not all locks on the car are properly applied, sealed and secured".

The proof is clear that on September 29, 1963, after the Claimant had detrained at La Salle Street Station and the train had reached the yard (some six miles distant from the station) the lock on the Stationery Locker in Dining Car 412, one of some 41 lockers under the Claimant's ultimate charge, was found to be open. *None of the contents had been removed.* And despite innuendo that some of the locks were not in working order, it was admitted by the Claimant that the one at issue was not faulty. Indeed, Claimant insisted not only that he had securely locked it before detraining at La Salle Street, but had actually rechecked all the lockers and found them all secure when he returned to the car in the yard to obtain his hat and coat.

It remains, however, that the Stationery Locker was found unlocked by the Carrier's patrolman on his inspection of the train when it reached the yard. And this fact was corroborated by still another of the Carrier's employes who was thereafter dispatched to the yard with the duplicate set of keys for purposes of securing the lock. Neither of these witnesses found any indication that the lock had been forced or pried open.

The main argument urged by the Organization in the investigation of this charge on the property was that Carrier produced no proof that it was the Claimant who omitted to secure the lock. It implied rather that in the journey from the station to the yard some third person might well have opened the lock or else that it had been jarred open by vibration or in some other unaccounted way. But, in the circumstances shown, the likelihood was remote that any such eventuality occurred. Thus, in view of the fact that the contents of the open locker were found intact no motivation is shown for a third person to have opened it. So, too, in light of the Claimant's own testimony that (1) the lock was in working order, and (2) he still found it unopened when he returned to the car at rest in the yard, the chances of it having thereafter been jarred loose are extremely unlikely. Accordingly, on the basis of the record before him, the trier of the facts was privileged to conclude, as he did, that the onus for the open lock was upon the Claimant, the employe charged with the ultimate responsibility for securing all the locks.

The much more bothersome aspect of this matter is that of the measure of discipline meted out by the Carrier for the omission found. After all, there was no tangible loss to the Carrier since nothing was found missing from the open locker. Belatedly the Carrier tried to justify the quantum of discipline by referring, for the first time in its submission to this Board, to Claimant's prior derelictions of the same character as that here involved. But so long as this previous personnel record of the Claimant was not produced or even adverted to in the investigation of these charges on the property it may not be introduced for the first time before this Board. The same must be said for the Carrier's procedural point to the effect that the claim had not been properly progressed on the property because of the omission by the Organization of an intermediate step in the grievance machinery. Neither of these contentions of the Carrier were timely advanced and, therefore, neither are properly before this Board (e.g., 5469 — Carter; 6744 — Parker; 6769 — Shake; 9492 — Rose; 9578 — Johnson).

In the last analysis, with pilferage the problem that it is in this area of railroading, it cannot be gainsaid that the discipline visited on this Claimant might well be justified on the basis of its deterrent rather than punitive aspect. In these circumstances this Board cannot conclude, without more, that the sentence dispensed by the Carrier was arbitrary or capricious or in any way motivated by ill-will or bad faith. See, e.g., 10429 (Rock) and cases therein cited. The claim must, therefore, 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 29th day of July 1965.