

 Award No. 19132
Docket No. MW-19311

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of thirty (30) days imposed upon Trackman S. Hayslett was improper and without just and sufficient cause. (System File 313-207)

(2) The personal record of the claimant be cleared of said suspension and reimbursement be made for wage loss suffered in accordance with Rule 34(d).

OPINION OF BOARD: The record discloses that Claimant, Trackman S. Hayslett, had been an employe of Carrier on Gang 210 for approximately five (5) years. On December 27, 1969, Claimant requested his paycheck from the paymaster. The paymaster inadvertently delivered Claimant a check made payable to J. H. Pruitt. Claimant endorsed the check by signing his own name (S. Hayslett) and presented it to Currency Exchange for payment. The Currency Exchange Cashier did not detect the discrepancy and cashed the check for Claimant. Subsequently, Currency Exchange discovered the error and informed Carrier that a check made payable to J. H. Pruitt had been endorsed and cashed by Claimant. Upon discovery that Pruitt's check was missing, payment was stopped on Pruitt's check by Currency Exchange. Claimant made restitution on Pruitt's check. The record further discloses that a day or two after receiving and cashing Pruitt's check, Claimant obtained his own check. Claimant received proper notice of a formal investigation, and upon conclusion of the formal investigation, Carrier assessed a 30 days suspension on Claimant. The Organization contends that the assessment of 30 days suspension was unjustified for the reason that the obtaining and cashing of Pruitt's check was unintentional and merely constituted an innocent mistake on the part of Claimant. Carrier takes the position that Claimant knowingly accepted a check belonging to another employe, and that under the circumstances, the discipline assessed was mild.

The record upholds the contention of the Organization. To hold otherwise would have the effect of upholding unproven assumptions upon which Carrier based its decision. The record reflects a series of careless instances not only on the part of Claimant, but also on the part of the Paymaster and Currency Exchange. There was no monetary loss by any of the parties to this dispute.

Pruitt evidently obtained the money due him; Currency Exchange suffered no loss; Carrier suffered no loss and Claimant made restitution upon discovery of the reception of the mistaken check. Had Claimant forged Pruitt's name on the check, this case certainly would have been resolved in favor of Carrier. However, there is no probative evidence of any ulterior motive on the part of Claimant in this instance. This claim will be sustained.

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

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.