

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20267
Docket Number CL-20323

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline **and** Steamship
(Clerks, Freight Handlers, Express and
(station **Employees**

PARTIES TO DISPUTE: (

(The Long Island Rail Road Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood
(GL-7367) **that:**

1. The Carrier violated the Agreement when it dismissed Clerk H. **J.** Ludwig on charges not proven, and when he was reinstated through appeal he was put back to work with no pay for time lost; such action by the Carrier being improper, unjustifiable, unreasonable, capricious and unwarranted; and

2. Carrier shall now be required to pay Clerk H. **J.** Ludwig for all time lost from August 24, 1972, date he was unjustly taken out of service until the date he was reinstated October 27, 1972; and

3. That his record be cleared of all charges and allegations.

OPINION OF BOARD: Claimant was charged with **committing** a dishonest act, namely; keeping a gratuity that had been entrusted to him. After investigation, he was terminated.

During the appellate process on the property, Carrier noted that the Claimant's **employment** record was "unblemished" and restored him to service.

Claimant's time lost was approximately two (2) months.

A lengthy recitation of the facts is not necessary. Basically, on April 14, 1972, a **Trainman (S)** found **an** attache case on a train. He telephoned the **owner and** it was agreed that the owner would retrieve the bag at Lost and Found, and that the owner would leave **a** gratuity for S. On the following day, **S** asked Claimant if any gratuity had been left for him. **Claimant** said "no." Thereafter, **S** contacted the owner again, who assured that a \$3.00 tip had been left when the attache case was picked **up. The** owner described Claimant as the individual who received the gratuity. **S** stated that when he again confronted **Claimant** and advised him of the discussion **with** the owner, he again denied receipt of the \$3.00 and stated that he "wasn't a collection agency."

Claimant admits receipt of the gratuity, and states that he placed same in the safe. He also presented a statement from another employee who states that on April 16, Claimant advised him that he had placed a reward of \$3.00 in the safe. Claimant admits that he denied receipt of the gratuity when S first inquired, but he was quite busy at the time. At the second confrontation, Claimant states that he did not deny receipt of the money, but, rather, stated that S should contact the Station **Manager**.

The main thrust of Claimant's testimony is that he never intended to convert the three dollars to his own use, but **merely** desired to bring the "entire matter to a head" because he did not feel that Lost and Found employees should be used as collection agencies. He conceded, "...I realize that I handled it rather badly..."

We are aware of the long series of Awards holding that this Board should not substitute its judgment for that of Carrier and attempt to make credibility determinations, as long as the Carrier has established its case by a substantive preponderance of the evidence. Even if Claimant were to be given the benefit of all conflicts in the testimony, we feel that the Carrier established a dishonest act. **Assuming** that the Trainman had no right to solicit a gratuity and no legitimate claim to the money, clearly, neither did Claimant. Claimant's admitted denial on at least one occasion, of possession of the money amounted, at least, to a wrongful appropriation, even if there was no intention to permanently deprive S of the money. Even if his motives were good, Claimant chose a rather dangerous road to prove a point.

A two month suspension, even considering the record in the most favorable light to Claimant, cannot be considered as so excessive as to constitute an arbitrary or capricious abuse of discretion.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of **May** 1974.