

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20663
Docket Number CL-20489

David P. Twomey, 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-7439**) that:

1. The Carrier violated the established practice, understanding and **provisions** of the Clerks' Agreement, particularly, Rules 6, 7, 7-A-2, 9-A-1, 9-A-2, among others, when it took Ticket Clerk S. Bartnicki out of **service** on March 23, 1972 and failed and/or refused to give him a Hearing and/or Trial.

2. The Carrier shall pay Ticket Clerk S. Bartnicki a day's pay (8 hours) at the pro rata rate of pay for each day he is withheld from service effective March 23, 1972 and for each day thereafter **until** he is returned to service and given a fair and proper Trial before invoking discipline.

OPINION OF BOARD: On March 23, 1972, the Claimant was advised by the the Carrier that he was "being held out of service for falsification of **Company** records resulting in a shortage of money at Stewart Manor Passenger Station". On June 14, 1972, Claimant requested a hearing. Carrier responded that because of the criminal nature of the charge, the Company trial would not take place until the outcome of the criminal action was reached. Claimant **was** indicted for "Grand Larceny, Second Degree" and subsequently pled guilty to "Grand Larceny, Third Degree". On November 9, 1973, Claimant was sentenced to 5 years probation and was required to make restitution of the \$12,000 shortage. A Company trial was held on November 26, 1973.

The principle thrust of the Organization's case is not one concerning the guilt **or** innocence of the Claimant, but centers on a procedural **argument** that Claimant was withheld from service an inordinately long time without the required hearing under the Parties' Agreement. A line of Awards of this Division support the contention that when no specific time limits are provided in the discipline rule, Carrier is required to grant a trial within a reasonable period of time. In this case, however, the Claimant didn't even see fit to show up for his own **trial** when it was eventually held. The following discussion (Transcript page 2) between the Hearing Officer and **the** Claimant's representative is of interest:

"MR. SABINA TO MR. WALDMAN

Q. Mr. **Waldman**, it is this Company's desire to hold this trial in **abstentia(sic)**. Do you have any objections?

A. Mr. **Sabina**, I have no objections at this time, but I would like to ask if we can postpone the opening of this trial for approximately one (1) hour. I have just spoken to **Mr.** Bartnicki on the telephone and I have informed him that we are all here and present and ready to commence With his trial. I asked him if he would make 'an effort to get here within the next hour' and his response was that 'I cannot guarantee it Don, but I will try the best I can.' I further asked Mr. Bartnicki if two (2) hours would be sufficient time and he stated he has 'other business to attend to and it will be a hassle to get to Jamaica. If they demand to start the trial, let them go ahead **and do** so and I will try to arrive later **on.**'"

The particular circumstances revealed in this dispute do not warrant overturning Carrier's decision of dismissal of this **employee**. Indeed, the question of the Claimant's guilt or innocence is not denied and, in fact, is not before the Board.

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,

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.