

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20744
Docket Number CL-20619

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**
(
(George P. Baker, Richard C. Bond, and **Jervis Lang-**
(don, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7478) that:

1. Carrier violated the Agreement between the parties when it arbitrarily, capriciously, and in abuse of discretion, dismissed and terminated the services of Arthur Graham, Station Porter, Penn Station, **New** York, N.Y.

2. Carrier shall be required, as a result, to restore all of Claimant's rights, clear his record of the alleged offense and compensate him for any wage loss suffered.

OPINION OF BOARD: The Claimant has raised certain objections concerning the conduct of the hearing. Our review of the record fails to demonstrate any procedural deficiencies which would preclude the Board from issuing a decision on the merits of the dispute.

Claimant was notified to attend a trial concerning allegations of failure to attach identification checks to two (2) bags, and failure to remit money to Carrier concerning said bags, as well as general allegations of improper preparation of remittance records.

Subsequent to trial, Claimant was dismissed from service.

The Organization notes that the notice of disciplinary action recites the fact that "Previous Discipline Record Taken Into Consideration", but the record fails to disclose that record. The Organization did not challenge the past record while the matter was under review on the property. In an appropriate case, the exact past record could be quite **pertinent** to the Board as it relates to the arbitrary or capricious nature of the quantum of punishment imposed. But, for reasons stated below, the exact nature of the Claimant's past record is not crucial to this determination.

The evidence shows that on the day in question, Claimant (employed as a station porter) assisted two (2) incognito detective operators with their luggage. Although there were six (6) pieces of luggage, Claimant only tagged four (4) pieces. Upon delivery of the bags to the train, he collected the standard **amount** for **all** six bags.

Claimant sought to explain the problems of the day and the discrepancies by stating that he sold the wrong bundle of checks and did not notice that fact until the end of the day. The Claimant's explanation of his attempt to rectify his mistake strongly suggests an attempt to evade detection, where, a direct explanation of the mistake to his Supervisor would have been a much easier path to follow. See Award 20292:

"It has long been held in this and in other **forums**, that a trier of fact is not limited to exculpatory statements by one charged with an **offense**, and need not accept the individual's testimony of intent where his actions are to the contrary. Individuals are presumed to intend the natural and logical consequences of their actions, and an individual's intent may be reasonably inferred from outward manifestations and activities."

Although Carrier could not produce a signed document showing Claimant's receipt of the September 12, 1972 regulations, Claimant had been employed as a station porter for more than five (5) months and would have trained under an experienced employee. We cannot presume that he was not aware of basic procedures concerning baggage checking and remittance of appropriate monies.

While there could be some question concerning certain remittance forms, **we** feel that Carrier has presented substantial evidence to establish that Claimant engaged in a dishonest act.

We are not unmindful of the small dollar value involved. However, dishonesty must be considered as a serious offense and this Board has refused to reinstate employees who have misappropriated items of small value. See Awards 19929 and 20003.

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 30th day of May 1975.