

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23857  
Docket Number CL-23888

T. Page Sharp, Referee

PARTIES TO DISPUTE: { (Brotherhod of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
{The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9344) that:

(1) Carrier violated the Agreement between the Parties when it required M. E. Novosel, Jr., Clerk-Caller, DeForest Junction, Warren, Ohio, to appear for investigation in connection with theft and cashing of company pay drafts from Haselton Yard Office, Youngstown, Ohio; and arbitrarily, without justification, invoked penalty of dismissal on him on January 8, 1980, and

(2) Because of such impropriety, Claimant M. E. Novosel, Jr., shall be reinstated to service of Carrier with all rights unimpaired, his service record cleared of the charge, and he shall be compensated for all time lost.

OPINION OF BOARD: Claimant, Mr. M. E. Novosel, Jr., was employed as a clerk-caller in Carrier's facility at DeForest Junction, Warren, Ohio, until he was dismissed from service on January 8, 1980 as a result of an investigation held on December 20, 1979. Claimant was charged with the theft and cashing of payroll checks stolen from the Haselton Yard Office, Youngstown, Ohio.

At the investigation a Mr. Willie King testified that he had been given a paycheck payable to a G. C. Mike. This paycheck and three others had been stolen from the Haselton Yard Office sometime between 10:00 PM, October 26, 1979, and 7:00 AM, October 27, 1979. Mr. King testified that he had been given the paycheck by Claimant to settle a debt that Claimant owed Mr. King. Mr. King testified that he was told by Claimant to take out what was owed him and to give Claimant the balance. By written statement a Mr. Joseph Maruskin stated that he had talked to Claimant by telephone and Claimant advised that he was sending a fellow worker in with a good paycheck to be cashed at the Hollywood Bar. Mr. Maruskin cashed one of the payroll checks.

Petitioner raises three procedural issues in support of its argument that Claimant was denied a fair and impartial investigation, to wit: (1) that Carrier's refusal to sequester the witnesses was fatal to a "fair and impartial investigation" (2) that the fact that Carrier did not call all the parties possibly involved in the check cashing transactions was fatal to a "fair and impartial" investigation and (3) that Carrier has failed to carry its burden of proof in the investigation.

While the hearing officer has the authority to sequester witnesses if he so **desires**, his refusal to do so does not **render the investigation** void. (Third Division Award 21288)

X The contention of the petitioner that the Carrier was under a duty to call all the witnesses involved in the transactions is without merit. The Carrier is entitled to call only those witnesses it seems necessary to the case. The Claimant knows the charges against him and if he deems it necessary to have witnesses who might help his case it is his responsibility to secure the appearance of such witnesses or at least secure statements from the same.

The Carrier utilized written statements from several individuals who did not personally appear at the investigation. It has long been held that such statements may be submitted as evidence and appropriate weight will be given to them.

As to the contention that the Carrier failed to carry its burden of proof it has long been the rule in the Third Division that if the evidence is not arbitrary or capricious, then the decision of the Carrier is not to be disturbed. (Third Division Awards 15594, 15167). This Board believes that there is ample evidence in the records that Claimant gave the paycheck to others to cash and facilitated the cashing of the same to substantiate that the findings of the hearing officer were not arbitrary and capricious. Eased upon these facts this Board will not upset the judgment of the hearing officer.

**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 disputes involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

RECEIVED  
JUN 14 1935  
Chicago, Ill.  
NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1935