

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23981
Docket Number CL-24049

Lamont E. Stallworth, Referee

PARTIES IN DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(CL-9447) that:

(a) The Carrier violated the Rules Agreement effective July 1, 1972, particularly Article 18, when it assessed discipline of dismissal on A. Nathan, Express Clerk, on April 23, 1980, following charges brought against him on April 7, 1980.

(b) Carrier further improperly assessed a second discipline of dismissal on A. Nathan on April 23, 1980 following charges brought against him on April 11, 1980.

(c) Claimant Nathan's record be cleared of both dismissals and he be compensated for all wage loss sustained in accordance with the provisions of Article 18(e).

OPINION OF BOARD: On April 2, 1980, Claimant Nathan was regularly assigned as Express Clerk, Washington, D.C. He had been an employee in Carrier's service since February 27, 1950, with four (4) breaks in service. During his tenure with Carrier, Claimant was assessed discipline in eleven (11) cases.

On April 7, 1980, Claimant Nathan was requested to report to a hearing Thursday, April 10, 1980 on the charge of failure to obey the General Baggage Agent's Special Instructions dated February 29, 1980 which state:
(1) No more than \$20.00 will be kept in the cash register at any given time. Money and checks above that amount will be placed in the drop safe. (2) You will lock the front door to the Express Office if you leave the area unattended. (3) Do not leave the key in the cash register while register is not being med. Because Claimant failed to appear for hearing on April 10, 1980, it was postponed and rescheduled for 1:00 pm, April 15, 1980.

On April 11, 1980 Claimant Nathan was requested to report for another hearing at 12:30 pm, April 15, 1980 in connection with the charge that he failed to attend the hearing on April 10, 1980. Both hearings were heard on April 15, 1980.

On April 23, 1980 two (2) letters were sent to Claimant: (1) dismissing him for failure to comply with instructions to attend hearing; and (2) dismissing him for violation of Rules "B" of the Rules and Regulations of The Washington Terminal Company, which reads in part, 'Employees must know and obey the Rules and Special Instructions---'.

On April 30, 1980 the discipline was appealed to C. W. Shaw, Manager. The appeals hearing was scheduled and heard on May 12, 1980.

By letter of May 22, 1980, Carrier denied Claimant's appeal in regards to 'failure to comply with instructions'. By same letter Carrier scheduled a further Appeal Hearing for June 9, 1980 because of a recent development in the case in regards to failure to obey the General Baggage Agents Special Instructions. By letter of June 16, 1980 the Carrier denied Claimant's appeal.

The Carrier asserts that on April 7, 1980 the Claimant was requested to appear for a hearing on April 10, 1980 and that Claimant failed to appear. Testimony by General Baggage Agent Miller stated that he attempted to serve the letter of charge on the Claimant at about 3:10 pm, April 7, 1980, that the Claimant took the letter, looked at it, and then dropped it to the table. Claimant then made numerous comments such as: "I'm not coming to the hearing" and "I'm not going to go," and the Claimant then walked away.

The testimony of General Baggage Agent Miller is corroborated by Baggage Foreman Richards. The Claimant denies all knowledge of the letter of charge. Claimant testified that Mr. Miller "attempted" to read "something" to him but that he had refused to listen.

In regards to the charge that Claimant failed to obey the General Baggage Agent's Special Instructions dated February 29, 1980, the Carrier asserts that Claimant was aware of such instructions because he acknowledged receipt of such instructions on March 1, 1980 by his signature.

Officer Dyer testified that on the evening of April 2, 1980, at approximately 7:20 pm, he found the front door to the Express Office unlocked, keys in the cash register, a considerable amount of money in cash register and nobody in attendance. Officer Dyer testified as follows:

"Q: Mr. Dyer, when you entered the Express Office, was the cash drawer open?

A: No, sir.

Q: Did you open it?

A: Yes, sir.

Q: How?

A: By using the key and depressing the drawer release button.

"Q: Do you see any money in this register at this time?

A: Yes, Sir, I did.

Q: How much money?

A: In the \$20 drawer. I saw a crumbled dollar bill; in the tens, one ten; in the fives, one fives; in the single drawer, a considerable amount; the quarters drawer--I would say--was at least three-quarters full; and miscellaneous dimes and nickels."

The Carrier maintains that Claimant's assertion that he was in the Express Office at 7:20 pm conducting business with ABC News is not true. The Carrier stated that one Way Bill, No. A0326310, with ABC News, was timed at 7:20 pm while a second Way Bill, No. A0326309, was timed at 9:20 pm. Contact with ABC TV Transport Desk indicated that the two shipments made on the evening of April 2, 1980 had left ABC's Office at 9:05 pm.

Checker Harlan denies that between 7:25 pm and 7:30pm he was given the cash register key by the Claimant on his way to the restroom, as Claimant asserts. The Carrier further maintains that Claimant could not have given the key to the cash register to Mr. Harlan because the key was in the cash register as testified by Officer Dyer.

The Carrier noted that on two (2) occasions, Claimant has been discharged and, each time the Carrier restored him to service in consideration of his 28 years of service. The Carrier does not wish to do so in this case.

The Claimant concedes that he did not appear at the hearing on Thursday, April 10, 1980. However, Claimant maintains and we concur that such non-appearance does not constitute insubordination (Third Division Award No. 21779, First Division Award No. 20479, and Award No. 606 of Special Board of Adjustment No. 195). Further, Claimant maintains that the Carrier did not show that there was, in fact, a hearing which Claimant did not attend.

The Claimant asserts that the Carrier rested its case concerning failure to obey "Special Instructions". Claimant further asserts that Officer Dyer's testimony was ambiguous and inconclusive in that "a considerable amount" in the single drawer is not definitive, and that a quarters drawer "at least three-quarters full" is not definitive. Claimant denies 'having left more than \$20 in the drawer.

According to Claimant, Checker Harlan was "up front in the Baggage Department" where Claimant gave him the "main key" to the cash register. According to Mr. Harlan, whenever Claimant would give him the "main" key, he (Harlan), would go in the back until Claimant returned. Therefore, it is not persuasive that Claimant left "the area unattended".

Testimony by Checker Harlan indicated that the cash register cannot be "operated" but a knowledgeable person may know how to "open" it. Claimant testified that he gave the "main" key to Harlan before he left the **Express** Office and Officer Dyer testified that he did not see the "main" key. Therefore Claimant maintains that his responsibility **under** the "Special Instructions" was not to leave the key in the cash register while the register is not being used and Claimant complied with that instruction.

Upon careful consideration of the record herein the Board finds that Claimant received a fair and impartial hearing. **The** charge was supported by the preponderance of the evidence on the record.

The **Board** concludes that under the circumstances the discipline assessed was not premised on caprice or unreasonableness; therefore the Board denies the claim.

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 **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 not violated.

A W A R D

Claim denied.

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 27th day of August 1982.

