

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24714  
Docket Number MW-25069

**Tedford E. Schoonover**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) **The** dismissal of **Trackman** A. Lane for alleged violation of Rule 'O' on April 11, 1981 was unwarranted and on the basis of unproven charges (System Docket 2690).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On July 7, 1981, Carrier sent the following notice to Claimant to attend an investigation hearing at 10:00 AM, July 16, 1981 on the following charge:

"Violation of the applicable portion of Amtrak's Rules of Conduct, Rule 'O', which states, '... No Employee shall misuse or permit any other person to misuse passes.' In that on January 16, 1981, you obtained a ticket for passage from Syracuse, New York to New York, N.Y., with your Rail Travel Privilege Card. That on April 11, 1981 at 4:00 a.m., these tickets were presented to the Ticket Agent at Rochester, New York, for validation by Ms. K. Hunt and another unidentified female for **revalidation**."

The above notice was sent by certified mail to Claimant's last known address. The letter could not be delivered and was returned with a notation, "Moved, not forwardable. address unknown, Moved, left no address". On return of the letter, Carrier postponed the date of the hearing and sent a second notice to Claimant. This notice was dated July 31, 1981 and set a new date for the hearing as August 20, 1981. This second notice was also sent via certified mail to Claimant's last known address and was returned unopened with the same notation as the first. Carrier proceeded with the hearing in absentia. It is noted, however, a representative of the Brotherhood knew of the hearing and attended on behalf of Claimant.

During the hearing Mr. Russo, Brotherhood Representative raised question as to whether Claimant had received a proper notice of the hearing. The rules cited by Mr. Russo in support of his objections are:

"RULE 68

TRIAL

**Employees** shall not be suspended nor dismissed **from** service without a fair and impartial trial."

"RULE 71

ADVANCE NOTICE OF TRIAL

(a) An **employee** who is accused of an offense and who is directed to report for a trial therefor, shall be given reasonable advance notice in writing of the exact charge on which he is to be tried and the time and place of the trial."

During the hearing Carrier submitted evidence that contact had been made with the Personnel Department to verify the address used in notifying Claimant of the hearing. Evidence was also introduced that the notices were sent by certified mail and had been returned as undeliverable because addressee had moved without leaving a forwarding address. Nor did the Carrier stop with only a single effort. Having had the first notice returned a second try was made to notify the Claimant. The hearing was held in absentia only after establishing that every reasonable effort had been made to issue a proper notice to Claimant as required by the rule. It is clear Claimant's representative received notice of the hearing as evidence by his presence and participation therein.

The evidence is clear that Carrier made a good faith effort to notify Claimant of the hearing as required by the rule. The use of certified mail **with** return receipt used in this case is the method generally approved in the industry for sending such notices. Claimant's failure to leave a forwarding address cannot be used to sustain the charge that Carrier failed in its obligation to give him a proper notice as required by Rule 71. As stated by Referee Wallace in another Third Division Award No. 21696:

Third Division Award No. 21696, Referee Wallace

"The Carrier went beyond what could be considered its responsibilities here in seeking to ensure that Claimant had notice of these hearings. It has been held that the Carrier cannot be made an insurer of the receipt of this type notice. Where bona fide efforts are made to deliver the notice but the failure **of delivery** is due to Claimant's conduct, then it must be concluded the rule requirements have been met. Award 13757 (Coburn). The Employee had the responsibility not to avoid service of the notice. Award 15007 (Wolf)."

Although A. Lane, the Claimant, acknowledged responsibility for the tickets, which he obtained with his Rail Travel Privilege Card he denied he gave either of the tickets to another person. He acknowledged signing his name on the back of one of the tickets but not the other. Nevertheless, both tickets were tendered for passage to the ticket agent at Rochester, N.Y., on April 11, 1981; one by a Ms. K. Hunt and another unidentified female who refused to provide identification. Suspicious, because the names on the tickets did not match the persons who attempted to use them, the agent confiscated the tickets and sold the

women one way tickets. The woman identified as Ms. Hunt became angry and stated "I've been using my brother's pass many times, and never had this problem before". The agent explained to her the pass rules and regulations and that what she was attempting was a clear violation and considered pass abuse. Subsequently, the confiscated tickets were submitted to the Pass Review Panel which concluded the Claimant had fraudulently misused his pass privileges. Such privileges were revoked effective June 30, 1981.

During the confrontation with the ticket agent K. Hunt identified herself as Claimant's sister. He denied this without providing any evidence in support of his statement. His only defense was he put the tickets in his dresser drawer and did not know how they got into the hands of the two women. The circumstances do not lend credibility to his denials or professions of ignorance as to how the tickets found their way into the possession of the women.

The evidence sustains the charge that Claimant violated rules and regulations and thus we must conclude that this is a clear case of pass abuse. The provision of free transportation is a valuable privilege accorded employees. Permitting others to take advantage of this privilege is clearly a dishonest act and a serious offense. It has been held in numerous cases that dismissal is warranted in such situations and we find nothing in the evidence to mitigate similar findings here. In Public Law Board No. 2406, Award No. 20, between **this same** Carrier and the **Brotherhood**, **Referee R. Kasher held** that ,a proven offense of pass abuse provided just cause for the discipline of dismissal.. In a similar case Referee **Perelson** held in **Third** Division Award No. 16168 as follows:

"Dishonesty, in any form, is a matter of serious concern and dishonesty usually and frequently results in a dismissal from the service of the Carrier . . . Claimant has been in the service of the Carrier for approximately 12 years. Years of service alone does not give an employee a right . . . to commit dishonest acts . . . The penalty assessed in this **case** was solely **within the** discretion of the Carrier and we will not seek to substitute our judgment for that of the Carrier since we do not find or consider it arbitrary or capricious."

On the basis of the evidence reviewed herein we find Claimant's dismissal was just and reasonable.

**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;

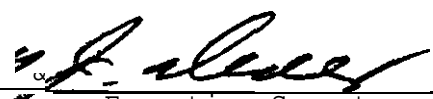
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

A T T E S T :   
by J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.

