

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24837
Docket Number CL-24347

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9514)
that:

Carrier violated the Agreement at Charlotte, North Carolina, when effective July 15, 1980, it dismissed Mr. G. T. Patterson for an alleged failure to provide record of sale of AMTRAK Ticket No. 1-015537576 4 or voided ticket for accounting purposes.

For this violation, Carrier shall now be required to restore Mr. G. T. Patterson to service with his seniority and all rights unimpaired and compensate him for all time lost, commencing July 15, 1980, and continuing until such restoration has been accomplished.

OPINION OF BOARD: Claimant, who had been employed with the Carrier since October 2, 1979, was dismissed from the service of the Carrier approximately nine months later on July 15, 1980, following a formal investigation of the same date. The Claimant was charged with failing to provide a record of an AMTRAK ticket, or a voided ticket, which had been unaccounted for during his assigned duty on July 10, 1980. In essence, the Organization claims that the discipline as assessed was unjust and unreasonable and that the Carrier has not met its burden of proof as contemplated in Rule C-1(f) of the controlling Agreement.

The Carrier argues that the Claimant received a fair and impartial investigation, that the Claimant admitted his responsibility and guilt at the formal investigation, that the Claimant failed to account as provided for in the Carrier's operating procedures which were well known to the Claimant and that the dismissal action was appropriate.

The events which give rise to this dispute stem from an incident which took place on July 10, 1980, in Charlotte, North Carolina. While Claimant was working as a Ticket Clerk, he was approached by a Terminal Control Agent of the Carrier who inquired whether or not the Claimant could assist an elderly lady in distress. The record indicates that the lady had informed representatives of the Carrier that she had purchased a ticket in Charlotte for a trip from Charlotte to Washington, D. C. Needless to say, the lady did not have the ticket, it being either lost, stolen, missing or never purchased at all. Although she had a ticket envelope, she had no receipt to verify previous purchase. In any event, the Claimant issued her a ticket for her trip, relying on her promise to remit payment as soon as she reached her destination. In his report of ticket sales

of that date, the Claimant made no mention of the issuance of this ticket and placed the accounting stub for this ticket in his pocket in hopes that the elderly lady would remit payment. She never did. Claimant's account of the events that transpired are supported by three other Carrier employees.

In brief, what is before this Board is not a question of whether the Claimant was gullible or naive, nor is it whether the Claimant participated in an act of corporate kindness to an elderly lady in distress. The true question is whether or not the Claimant failed to report an account for his ticket transactions of July 10, 1980.

Of that question there can be no doubt in the answer. The Claimant admitted his actions at the formal investigation and his actions, as well as motives, were supported by the testimony of three co-workers. We concur with the position of the Carrier that the facts as adduced from the formal investigation fully support a finding of the Claimant's guilt.

The only remaining question for our review is whether or not the discipline assessed was excessively harsh given the nature of the charges and the circumstances of events. Although we would be more inclined to reach a different result than that of the Carrier, this Board finds itself powerless to do so. In Third Division Award No. 19486, this Board stated:

"The Board has also held that where the Claimant was afforded a fair and impartial hearing and the action of the investigation was neither arbitrary, capricious or in bad faith, the action of the Carrier should not be disturbed."

In Award No. 14700 of this Division, this Board stated:

"In view of the Claimant's own admissions at the investigation, this Board would be usurping its powers were it to substitute its judgment for that of the Carrier. Innumerable awards of this Board have enunciated the controlling principles in discipline cases. In the absence of sufficient evidence of probative force warranting an abusive discretion on the part of the Carrier, we will not presume to reverse or modify the Carrier's disciplinary decisions, unless it has acted in an unreasonable, arbitrary, capricious or discriminatory manner."

Furthermore, this Board has long held that dishonesty, in any form cannot be tolerated and will be dealt with severely by not only carriers, but also by this Board.

"This Board has taken the position that Carriers are not required to retain employees who are dishonest or who bring discredit to the Carrier in their service." Third Division Award No. 19486

"This Board has held that dismissal is not excessive in cases involving fraud and dishonesty In view of these principles, we do not feel that we should disturb the action of the Carrier in this case." Third Division Award No. 13116

"Stealing or any form of dishonesty on the railroads is a dismissal offense." Second Division Award No. 7519

Although this Board may have reached a different determination had it been the trier of fact, we are not at liberty to do so. For while we may commend the Claimant for his actions, we can in no way condone his purposeful and knowing failure to disclose an account for the ticket sales on that date.

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

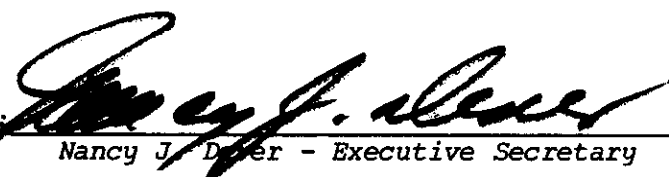
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1984