

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24840
Docket Number MS-2453

Robert W. McAllister, Referee

(Robert Zeichner
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice of our intention to file an ex parte submission on January 27, 1982 covering the following unadjusted dispute: Failure by Mr. Zeichner to remit to the Irving Trust Company for deposit to the Conrail account, all monies received by you from conductor and their assistances, also, commuter bar attendants, by shorting bundles of one dollars bills and other bundles during the period August 26, 1980 through September 18, 1980.

OPINION OF BOARD: Robert Zeichner, the Claimant, was, at the time of his dismissal, employed as a clerk/cashier with service since May 4, 1970. He was charged and found guilty of failing to remit all monies received by him during the period August 26, 1980, through September 18, 1980. The total shortage for this period amounted to \$128.

The Petitioner argues the Claimant's dismissal was improper on a variety of grounds. It is asserted the Carrier's motivation to dismiss the Claimant was not based on the alleged theft of money, but rather the Carrier acted in a retaliatory manner because the Claimant filed an OSHA complaint. The Petitioner further contends the canvas money bags could have been opened by others and that, as testified to by the Claimant, \$15,000 was, on one occasion, left out of the drop safe. The accounting procedures of the Carrier and Irving Trust are considered to be unreliable by the Petitioner. Finally, the Petitioner points out the Notices of Investigation were incorrect and that the Carrier failed to call witnesses available to it.

At the outset, this Board, having examined the complete record, finds no evidentiary basis to link the Claimant's filing of an OSHA claim with the action taken by the Carrier. Such an assertion necessitates a showing beyond argument. Turning to the Notices of Investigation, we fail to see how the amending of such notices, as new information becomes available, serves any purpose other than to, as accurately as possible, apprise the Claimant of what facts were under investigation.

The Claimant, a clerk/cashier, was responsible for handling large sums of money which are accounted for on a daily basis. Each cashier fills out a TD 53X which breaks down the amounts represented by cash and checks to be deposited. A copy of the signed TD 53X is placed in a canvas deposit bag which is sealed and placed in a drop safe. These canvas deposit bags are removed from the drop safe in the presence of a Brink employe and transported to Irving Trust Company. At Irving Trust, the bag is opened, and the deposit is verified by its employes.

On thirteen separate days between August 26 through and including September 18, 1980, the Claimant was short a total of \$128. The shortages of September 17 and 18 were also audited by management personnel. Of the \$128 total, 106 bundles of single dollar bills strapped in 50's were short \$1 each. The other \$20 is attributed to shortages in various bundles on August 26, 1980, and a shortage of \$2 in one bundle on September 17, 1980.

Contrary to the Petitioner's assertions, no evidence was entered into the record which would show the canvas bag seals were tampered with or that any other individual in the chain of custody intercepted and/or tampered with the Claimant's deposit bag. This Board, having no evidence to the contrary before it, agrees with the Carrier's position that the consistent pattern of shorting the \$1 bundles by \$1 is not suggestive of an honest error. The Claimant's statements at the hearing are quite revealing. He testified, in part, he paid "... all the shortages when confronted with them ..." (Emphasis added) and considered the shortage of \$128 to be "... minor compared to the amount of money handled." The Claimant was entrusted with the handling of Carrier's funds. Dishonesty is unacceptable conduct and has long been considered a dismissible offense in the railroad industry. There is no basis in this record to interfere with the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

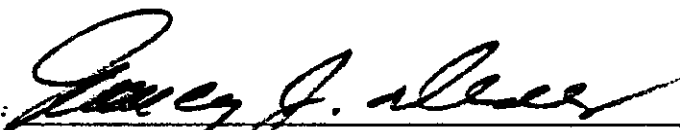
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

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