

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 255 13
Docket Number CL-25137

M. David Vaughn, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-9733)
that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when it dismissed from service Mr. R. Miller, Ticket Clerk, account of investigation held on March 1, 1982, and,

2. Carrier shall be required to reinstate Mr. R. Miller with all rights unimpaired, and compensate him for all losses commencing on the date he was dismissed, including fringe benefit entitlements and continuing until the violation is corrected.

OPINION OF BOARD: Claimant R. Miller was employed by the Carrier as a Ticket Clerk. At the time of his discharge, he had twenty-eight months of service with the Carrier. On February 19, 1982, Claimant was assigned to work at one of five open ticket windows at Carrier's Chicago, Illinois Passenger Terminal as one of twelve Clerks assigned to his shift.

Claimant's duties were to issue tickets to customers and receive payment for the tickets. He was required to account for all tickets sold and to turn in to the Carrier all ticket stubs and cash and checks received, together with a daily report of his transactions and receipts. To identify each Clerk's transactions, the Clerk is assigned a number and furnished with a stamp on which the number appears. Tickets and checks handled by that Clerk are stamped by him or her with the number. On the day in question, Claimant was assigned number 54. No other Clerk was assigned that number on that date.

On February 19, 1982, Claimant reported selling \$3,059.70 of tickets. He turned ticket stubs representing that amount of tickets and cash and checks in the amount of the ticket stubs plus ninety cents. On his worksheet tape for that date, Claimant reported having received a check in the amount of \$49.00. Claimant's report did not indicate that he had sold a ten-ride ticket to/from Crystal Lake, the only single ticket in the Chicago subdivision which sold for \$49.00, nor did it indicate any ticket sales to either of the other locations for which \$49.00 fares were offered.

Subsequent to February 19th, in a routine audit of the sales of that date, the Carrier discovered a numbered stub for a ten-ride ticket to/from Crystal Lake to be missing. It reviewed the deposits of that date and found two \$49.00 checks had been received. The checks were retrieved and the Clerk numbers stamped on each were compared against the Clerk report. One check was reflected by a corresponding sale in the report of the Clerk who sold it. The second, taken by Claimant, was not supported by a sale of any ticket for \$49.00.

Had Claimant's record of ticket sales included the ten-ride Crystal Lake ticket, the cash receipts he turned in for the date in question would have been \$48.10 short: he would have owed \$49.00 more.

The Carrier then contacted the passenger who drew the check, who indicated that he had, indeed, purchased a ten-ride Crystal Lake ticket from Claimant on the date in question. The Carrier recovered the ticket, which was the ticket represented by the missing stub. Claimant's validator stamped number was on both the ticket and the check.

After notice to Claimant, the Carrier conducted an investigatory hearing concerning the incident and, based on the results of that hearing, dismissed Claimant for failure to account for the ticket in question. No specific rule was cited in the notice of discharge, although at the hearing, the Carrier cited Rules 7 and 9 from Carrier's Safety Book, which state in relevant part:

Rule 7:

"Employers are prohibited from being . . . dishonest . . . or conducting themselves in a manner that the railroad will be subjected to criticism and loss of good will . . ."

Rule 9:

"Theft . . . is prohibited."

Following Claimant's dismissal, the Organization filed with the Carrier a claim for reinstatement and restoration of wages and benefits. The Carrier denied the Claim and, following unsuccessful appeals, the Organization brought the Claim before this Board.

The Organization argues initially that the Claim must be sustained because the Carrier failed to afford Claimant a fair hearing, since the co-hearing officer had participated in the investigation of the incident. The Organization's argument in this regard must be rejected. There is no indication as to the nature or extent of the co-hearing officer's participation in the investigation and no indication that the other co-hearing officer had participated in the investigation.

There is, in any event, no indication that the Claimant was in any way prejudiced in the presentation of his case, in that he was not denied the opportunity to present evidence or question witnesses. Under such circumstances, the Board has held that the rights of Claimants are not violated. See, e.g., Third Division Award 25037, ("There is no evidence that Claimant was deprived of opportunity to refute the charges or to offer into evidence any facts or circumstances in mitigation of his actions . . . the Board does not find that Claimant's rights have been violated by the manner in which the hearing was conducted.")

The Organization also asserts that Claimant was charged only with failure properly to account for funds but was penalized for theft. Clearly, failure properly to account for funds may be the result of a variety of actions, one of which is theft by the employee accused. Until the investigation is completed, the Carrier need not characterize the nature of the events which occurred, and the Failure to do so is not grounds to set aside the penalty, so long as the employee is notified of the precise circumstances which form the basis for the investigation and the general nature of the Carrier's concern. The Board concludes that the notice to Claimant here was sufficiently specific to satisfy the Carrier's burden and does not constitute grounds on which to sustain the claim.

With respect to the merits of the dispute, the Organization contends that the Carrier did not meet its burden of proof, in that the record revealed a number of possible explanations other than Claimant's removal of either money or the ticket stub. The Organization points to limits on the Carrier's investigation, since two other tickets were also missing and the agents were, in total, \$56.00 over for the day in question, and to the lax security and storage procedures under which another person might have had access to Claimant's cash drawer or tickets and might have utilized Claimant's number on ticket transactions.

The Board concedes the theoretical possibility that one or more of the events hypothesized by the Organization could have occurred. However, the Carrier was authorized to base its determination on the probabilities of the Claimant's guilt. The Board, on review, cannot conclude that the Carrier was arbitrary or capricious in concluding that the arguments made by the Organization did not create reasonable doubts that Claimant converted money in the amount in question to his own use. It was simply too remote a possibility that all the factors - the check and ticket with Claimant's stamp and Claimant's failure to report the sale - would have resulted from the explanations proposed by the Organization.

The Carrier has the right to expect absolute honesty on the part of its employees, particularly those who are directly entrusted with collecting its funds from the public. Board precedent is clear that breach of an employee's duty in that regard may properly result in discharge. See, e.g., Third Division Awards 25042, 25041 and 24993. Claimant's relatively short service offers no basis to mitigate the penalty.

Since the Board concludes that the Carrier's determination is not arbitrary or capricious and the penalty not excessive, the claim must be, and it is, denied.

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;

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That thts 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1985

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