

The Third Division consisted of the regular members and in addition Referee Jack Warshaw when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Boston & Maine Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10135) that:

1. Carrier acted in an arbitrary, capricious and unjust manner when, without just cause, it removed Clerk Harold Smith from service of the Carrier on June 10, 1982, and following formal investigation held on July 1, 1982, dismissed Claimant from service of the Carrier.

2. Carrier shall now be required to reinstate Clerk Harold Smith to service of the Carrier, compensate him for all time lost commencing with June 10, 1982, and continuing for each and every day Claimant is held out of service until he is reinstated with all rights and privileges including but not limited to seniority, vacation, sick leave, and other rights pertaining thereto.

3. Carrier shall further be required to compensate Clerk Harold Smith interest at the rate of 20 per cent per annum compounded on the anniversary date of the Claim on all monies due Claimant on Item 2 of this Statement of Claim.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, an Assistant Ticket Agent at North Station, Boston, Massachusetts, was notified by the Carrier's letter dated June 14, 1982, to attend a hearing to develop the facts and place responsibility in connection with the charge of:

"Irregular handling of tickets and funds while employed as Assistant Ticket Agent, North Station, resulting in shortage in your account when audited on June 10, 1982."

Following the investigation the Carrier notified the Claimant he had been adjudged guilty, as charged. As discipline therefor, the Claimant was dismissed from the Carrier's service.

The Organization contends that the Carrier violated the rules of the Agreement when it failed to prove that the Claimant's handling of tickets and funds was irregular or that there was anything improper in the shortage of his account. Further the manner of the Claimant's handling of tickets and funds had been known to the Carrier since February, 1982, about 100 days prior to the notification of charges without prior corrective action by the Carrier.

The Organization argues that the discipline was excessive, constituted disparate treatment and failed to demonstrate that the shortage in a ticket agent's account was irregular or unusual. It contends that the Carrier was aware that shortages existed in the accounts of its employees and permitted those shortages to be made up, both in the Claimant's account and those of other employees. The Organization notes that the Carrier's Director of Revenue Accounting admitted to knowledge that shortages were occurring in the Claimant's account and that far from attempting to conceal this fact from the Carrier, Claimant was placing his personal check into his cash fund to cover the shortages of the prior month with no objection or corrective action being made by the Carrier.

The Organization asserts that the Claimant was not stealing the Carrier's money as evidenced by his personally making up for shortages attributed to him. It notes that ticket office at North Station is lacking in adequate security, that among other deficiencies locks are seldom changed so that former employees or others may have access to the ticket agents' work site and that ticket agents are subjected to audits when they are not personally present. The Organization further emphasizes that the Claimant had a spotless work record since being hired by the Carrier in March, 1977, and should have been given progressive discipline for this first alleged offense rather than dismissed.

The Carrier states that a preliminary audit in May, 1982, disclosed an approximate shortage in the Claimant's account of \$500.00 between ticket sales and cash revenue. Later two separate audits were made by different auditors to disclaim or substantiate the Claimant's cash shortage. The results of those secondary audits revealed the Claimant's ticket sales account was short in excess of \$900.00 with no apparent reasons. Similar audits of the accounts of all ticket agents at North Station disclosed that all of the ticket agents' accounts balanced except for that of the Claimant.

The Carrier also states that it was aware from a routine audit on February 16, 1982, that the Claimant had an unaccountable cash shortage when it discovered in his collection case, the Claimant's personal check, postdated February 28, 1982, in the amount of \$360.00. It argues that it is unlikely the Claimant would do this using his own money unless of course restitution was to replace Carrier funds that were improperly in his possession in the first instance.

The Carrier acknowledges the possibility of errors on the plus or minus side in the course of cash transactions. However the \$941.00 shortage was described at the investigation as a record shortage for any ticket agent at North Station and no explanation for the shortage was provided by the Claimant who also admitted to earlier shortages. The Carrier further states that between January and May 1982, the record demonstrates a total shortage in the Claimant's account of \$1301.00, this sum representing the combined total of his \$360.00 personal check and the \$941.00 audit deficiency.

The Board has carefully reviewed the record in this case and finds sufficient probative evidence to support the Carrier's conclusion as to the Claimant's culpability as charged. The Claimant occupied a position of fiduciary responsibility and was found to have a significant cash shortage in his account which was not explained. Moreover, the size of the shortage was not of the proportion which might be routinely anticipated for employees similarly employed. In addition, the record discloses the Claimant's awareness of an earlier shortage of significant amount for which he deposited his personal check as either full or partial restitution. That establishes to the Board's satisfaction, that the Claimant's shortage uncovered in the May audit was not a one time aberration but rather a continuing problem in the Claimant's handling of the Carrier's funds.

In view of the seriousness of the Claimant's proven offense, the Board finds that the discipline assessed is reasonable and will not disturb the Carrier's action.

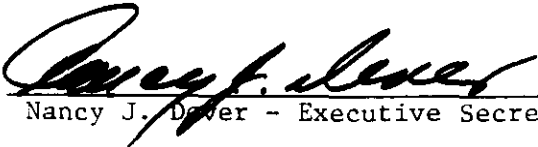
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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Award No. 27504
Docket No. CL-27526
88-3-86-3-781

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.