

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "(Carrier's File No. TCU-D-3256/TCU File No. 393-E9-670-S)

Claim of the System Committee of the Brotherhood
(GL-10466) that:

1. Carrier acted in a arbitrary, capricious and unjust manner in violation of Rule 24 of the governing agreement when by letter dated November 1, 1989 it assessed discipline to Claimant, Mr. R. J. Legette of five (5) calendar days actual suspension commencing December 2, 1989 up to and including December 6, 1989. Further it directed Claimant to make full and complete restitution of \$1,215.00 in accordance with instructions.

2. Carrier violated their own Equal Opportunity Policy and Preamble, when the discipline assessed to Claimant was done in a discriminatory manner in regard to his race and color.

3. Carrier shall now cleanse Claimant's record of all mention of these charges and compensate him for all time lost.

4. Carrier shall now reimburse Claimant any monies that he was required to pay with interest of 18%."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On September 5, 1989, the Claimant was working as a Clerk at the Columbia, South Carolina, train station. At approximately 1:30 A.M., he advised his fellow Clerk he was going to walk to the bank depository to deposit his cash receipts, which had been collected over a two day period and totaled \$1,215.00. The bank was located about 150 yards from the station. Shortly after leaving the station, the Claimant returned in a disheveled state and claimed he had been robbed. The police were called and searched for the assailants, but could not find anyone in the area.

By letter dated September 29, 1989, the Claimant was notified to appear at a formal Investigation to answer the following charges:

"Charge 1: To determine your responsibility, if any, for the violation of the National Railroad Passenger Corporation's Rules of Conduct, Rule D, that portion reading, 'Employees must understand and obey company and department policies, procedures and special instructions.'

Charge 2: Violation of the National Railroad Passenger Corporation's Rules of Conduct, Rule K, paragraph 3, that portion reading, 'Employees must use Amtrak Funds. . .with care. . .and protect them from theft by others.'

SPECIFICATIONS: While assigned as a Ticket Clerk at Columbia, SC you are said to have:

1. Failed to deposit station cash receipts for September 2, 1989 as required.
2. Failed to deposit station cash receipts for September 3, 1989 as required.
3. Failed to protect company funds by removing said funds from the station at an abnormal time.
4. Failed to make restitution in the amount of \$1,215.00 as directed by your Supervisor by letter dated September 14, 1989."

After reviewing the evidence produced at the Hearing, the Carrier determined the Claimant was guilty of Charge 2 and assessed him a five (5) day suspension which was modified to a five (5) day deferred suspension during the appeal process. In addition, the Claimant was directed to reimburse the Carrier the monies which had been stolen.

The Organization contends the Claimant was found guilty of being the victim of a theft. Besides, the Carrier discriminated against the Claimant because of his race. Other employees who were Caucasian and had had money stolen from them were not punished, nor asked to reimburse the Carrier. In contrast, the Claimant was asked to reimburse the Carrier the money which was stolen and was issued a five (5) day suspension.

The Carrier holds that the Claimant was guilty of not exercising proper care with the Carrier's funds. He was well aware the area around the station was a dangerous one, and yet, he accrued receipts over a period of at least two days and then decided to deposit the receipts at 1:30 A.M. instead of in the morning after his shift when the dangers would have been diminished. Even though the Carrier had requested the Claimant to reimburse the Carrier there has been no attempt to collect the monies. The penalty issued was actually a five (5) day deferred suspension and was certainly reasonable under the circumstances.

Even absent specific instructions to deposit receipts during daylight hours, it is only common sense that to do so decreases the chances of an Agent being robbed. Admittedly, the Claimant was not found to have violated expressed or written policies relative to the deposit of cash receipts. However, considering his own testimony that the area was unsafe at night, it cannot be successfully argued he was not guilty of "poor judgment." In addition, the transcript clearly shows the Claimant was well aware of his responsibility to safeguard Carrier property. He failed in this charge, not only by choosing to make the deposits during the early morning hours, when it was less safe, but, also by not making daily deposits. This Board believes the penalty of a five (5) day deferred suspension was reasonable.

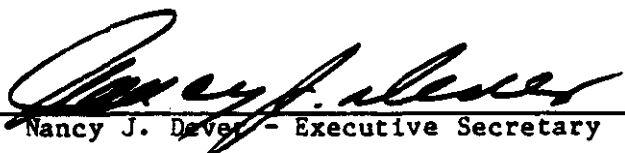
Absent the specifics in other similar cases cited by the Organization, there is insufficient proof the Carrier acted in a discriminatory manner towards the Claimant. This is so especially in light of the fact he has not been required to reimburse the Carrier the money which was stolen. For all the above-cited reasons, the Claim is denied.

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 29th day of August 1991.