

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31577  
Docket No. MS-32162  
96-3-94-3-563**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Deletha P. Jenkins

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation  
( (AMTRAK)**

**STATEMENT OF CLAIM:**

"On October 15, 1992, J. P. Larson, Supervisor Ticket Receiver's Office Washington, DC, personally hand delivered a letter dated October 6, 1992, directing me to pay a \$200 cash shortage in a bank deposit of July 31, 1992 without a formal investigation, violating Rules 6-A-1 and 6-B-1 of the TCU Northeast Corridor Clerk's Agreement.

The Over and Short Policy described in Bulletin 806 was applied when requesting a reimbursement of the \$200 cash debit. The purpose of the Over and Short policy is for identifying overages and shortages experienced during the sale of tickets and baggage services. The coverage of the policy applies to all employees handling Amtrak funds in connection with the sale of tickets and/or baggage service.

The Customer Advice of Debit was issued by Crestar Bank advising the National Railroad Passenger Corporation of the \$200 cash shortage in deposit of July 31, 1992, on August 3, 1992. Mr. Larson, Supervisor with NRPC did not direct me to pay the shortage until December 2, 1992, which is well beyond the thirty (30) day time limit as specified in the TCU Northeast Corridor Clerks Agreement Rule 6-A-1 section (B), which states: "no charge shall be made that involves any matter of which the Corporation has had knowledge thirty (30) calendar days or more."

In violation of my Union Agreement Rules 6-A-1, I was entitled to an investigation and was not afforded one. And, I was assessed discipline without having an investigation.

On December 24, 1992, the \$200 cash shortage was paid in accordance with instructions given by Mr. Larson by postal money order 47734601624.

On January 28, 1993, a claim and grievance was filed with Mr. James Larson, Supervisor - Ticket Receiver's Office. Mr. Larson denied the Claim and Grievance in its entirety on February 8, 1993. On February 18, 1993, appeal of the denial letter was sent to Ms. B. J. Blair, Division Director-Labor Relations. Ms. Blair based her denial of the claim on June 29, 1993 with incorrect facts. After Ms. Blair was given the correct facts in my letter dated July 12, 1993, Ms. Blair chose not to modify her decision in letter dated August 29, 1993.

The Claim and Grievance was appealed to Mr. L. D. Miller, Director, Labor Relations. On March 2, 1994, Mr. Miller denied the Claim and Grievance based on the facts as presented by Ms. Blair, which were not correct. I wrote Mr. Miller on March 12, 1994, disputing the incorrect facts used to deny my grievance. Mr. Miller, in letter of March 12, 1994, refused to modify his decision.

It is the contention of both Ms. Blair and Mr. Miller that I did not immediately pay the \$200 cash shortage until after I had requested additional information explaining the debit. It is alleged by Mr. Miller that I totally refused to pay the debit until the information was supplied to me by Mr. Larson. I paid the \$200 cash shortage on December 24, 1992. I requested the information from Mr. Larson on January 28, 1993.

Based on the information contained in the documents which were provided to me by Mr. Larson, there was no concrete evidence that proved beyond the shadow of a doubt that the shortage was actually mine.

I am therefore, requesting reimbursement of the \$200 that I was forced to pay unjustly."

**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 employee 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 the property, the January 28, 1993 claim filed by the Organization read as follows:**

**“(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised particularly Rules 6-A-1, 6-B-1, and others as well as company over and short policy when an alleged shortage was discovered in the July 31, 1992 work of claimant, Ms. D. P. Jenkins and the Company had knowledge no later than October 15, 1992 and required Ms. Jenkins with a threat of discipline to pay \$200.00 on December 24, 1992.**

**(b) Claimant paid the \$200 on December 24, 1992 under protest to avoid possible termination of employment.**

**(c) To satisfy this violation of our rules agreement Ms. Jenkins should now have this \$200.00 returned.**

**(d) Claim filed in accordance with Rule 7-B-1 and should be allowed.”**

**This Board cannot consider matters outside of the original claim as filed and discussed on the property. Therefore, to the extent new factual assertions or arguments are raised by Claimant in her claim filed with this Board, those matters shall not be considered.**

The substance of the claim filed on the property, and as the record developed on the property reveals was discussed by the parties, is that Claimant was determined by the Carrier to be \$200 short in Carrier funds possessed by Claimant and was required to repay that shortage. That process of repayment was made without affording Claimant an Investigation as a disciplinary matter.

Because Claimant asserts that she was entitled to an Investigation, the burden is on Claimant to contractually demonstrate such entitlement. Claimant has not met that burden. With respect to such shortages, we have no basis to definitively determine from the language of the Agreement or from the existence of a practice on the property if such repayments are treated as disciplinary-type matters entitling employees like Claimant to an Investigation.

With respect to the merits, the evidence shows that Claimant asserts the shortage was improperly assessed. The Carrier asserts that the required reimbursement was proper. Again, through on-property handling, the burden is on Claimant to establish facts sufficient to support her claim. At best, from what was developed on the property, the record is in conflict. Claimant has therefore not met her burden.

Under the particular facts of this case, the claim will be denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 29th day of August 1996.**