

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,**
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

The discipline of reprimand be removed from the record of H. J. Ackenhausen, Ticket Clerk, 30th Street Station, Philadelphia, Pennsylvania, and that a sum in the amount of \$4.00 be refunded to Ackenhausen because of an arbitrary action of the Management compelling him to make a payment of \$4.00 as a result of a refund made to a Mr. Wood by the Management for a ticket sold on March 9, 1947 (Docket E-439).

OPINION OF BOARD: Claimant employe, H. J. Ackenhausen, Ticket Clerk, was given a reprimand by the Carrier on May 2, 1947 for the alleged offense of overcharging a passenger for a ticket and failing to account for the overcharge. Claimant was also required to turn over to the Carrier \$4.00 which it is stated was refunded to a passenger by reason of the overcharge made by claimant on March 9, 1947.

Claimant entered the service of the Carrier on December 18, 1918 and at the time of the occurrence in question had been employed as a Ticket Clerk for a number of years at the Pennsylvania Station at 30th Street, Philadelphia, Pa. In the record made in this case no previous reprimand had ever been placed against claimant.

An investigation was conducted by Mr. W. P. Fogle on March 25, 1947 and a trial was held on Wednesday, April 2, 1947. At the trial it was charged that claimant sold a ticket to one, Wood, on the forenoon of March 9, 1947, Philadelphia, Pa., to Dobbs Ferry, New York, which with the tax and Travelers' Insurance premium of 25 cents, would amount to \$5.60. That the passenger states that he paid \$9.60.

At the trial Chief Clerk T. A. Donnelly testified that the passenger, Mr. Wood, gave him the information relative to the transaction, as above related. That by reason of the story told him by Mr. Wood a refund was made of \$4.00. The Mr. Wood, who bought the ticket and received the refund, did not appear at the trial and no evidence of a substantive nature was presented with reference to the entire matter, as coming from Mr. Wood. Therefore, there was no opportunity ever afforded Claimant to cross-examine the Mr. Wood.

The Organization contends on behalf of Claimant that Rules 6 and 7 were violated in the method of conducting the trial. And on behalf of Claim-

ant are cited Awards 2880, 2613, 2614, 2634, 2653, 2797, 2895, 3178, 3179, 3288, 3573, 3859 and 4149.

The Carrier contends that the reprimand assessed was in accordance with the facts and the evidence presented at the trial. And that it is not necessary that complaining witnesses be presented in such cases and on behalf of Carrier is cited Awards 71, 373, 3109, 3905 and 3955.

A careful reading of the record of the trial held in this case reveals glaring defects in evidential procedure and findings made, in view of the general standard in all such matters, in common practice throughout the United States. All essential elements are lacking when considered in the light of accepted procedure and practice in giving an accused a fair and impartial trial in any contractual or legal proceeding.

A hearing such as was given Claimant violates all accepted and essential rules of legal or quasi-legal procedure in the development of the truth in any given situation. The evidence on which the reprimand is based is sketchy in the extreme. A finding based on evidence of the nature given would be better made without a trial, which would be a direct violation of the Agreement, by reason of the fact that after going through the motions of giving a fair and impartial hearing the injury to the Claimant is twofold, in that, he receives a reprimand based on a trial of this nature. The giving of a reprimand based on a hearing of this nature is entirely inadequate and certainly has no standing under this Agreement or in any other like proceeding under American jurisprudence.

The claim is sustained and the Carrier is directed to return to the Claimant the \$4.00 assessed against him.

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 violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.