Award No. 4296
Docket No. CL-4146

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:

(a) The ten days' suspension imposed upon F. J. Heinly, Ticket Clerk, Broad Street Station, Philadelphia, Pennsylvania, from October 5 to October 15, 1947, inclusive, as discipline, be removed and that he be compensated for wage loss because of the improper application of discipline.

(b) The Eighty Dollars and thirty-eight cents ($80.38), which was charged to Clerk F. J. Heinly's account and which was paid by him, be removed as a shortage from his account, and this amount be returned to him. (Docket E-473)

OPINION OF BOARD: The claim is fully stated in the record.

Claimant, Ticket Clerk F. J. Heinly, Broad Street Station, Philadelphia, was charged with failing to properly safeguard Company funds resulting in loss of the same.

The entire ticket office at this station is in one enclosure, with only one door leading into it from the extreme rear of the ticket windows. This door is equipped with a spring lock. There are a number of ticket windows at the front of this office. Approximately 20 feet to the rear of the center ticket window is what is known as the "cashier's location", which is equipped with a front window and a railing with a swinging gate surrounding the location. Inside the window are two ledges, one being even with the window and the other below it. Anything placed on the lower ledge cannot be seen from the front of the ticket office and on this ledge Clerk Heinly and other clerks, authorized to receive Red Cap collections, have placed the same on this ledge, also in the cashier's compartment in the rear of the department which had a lock.

On the night of May 16, 1947 Claimant was handed a bag containing Red Cap collections, (in the amount of $80.38), at approximately 11:35 P. M. After giving his receipt, he proceeded to the rear of the department, placed the bag and its contents on the lower ledge which had been the practice of he and other clerks. He then returned to the ticket window to wait on those desiring tickets. While selling these tickets at the window, his back would be to the cashier's department and when busy, persons could enter and leave by the rear door without him seeing them. The funds disappeared.

It is contended by Claimant that he did not get a fair trial for the reason that no witnesses were called upon to testify, which violated Rule 6-A-1:

> "(a) Employes will not be suspended nor dismissed from service without a fair and impartial trial.
>
> (b) When a major offense has been committed an employe suspected by the Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision."

and that Claimant was not given the benefits contemplated in Rule 6-B-1:

> "An employe who is required to make a statement prior to the trial in connection with any matter which may eventuate in the application of discipline to any employe, if he desires to be represented, may be accompanied by the 'duly accredited representative', as that term is defined in this Agreement. A copy of his statement, if reduced to writing and signed by him, shall be furnished him by the Management upon his request."

In fact, it is alleged that the transcript of the investigation discloses that interrogators failed to develop all relevant facts, therefore making the investigation inconclusive for the reasons:

1. The Claimant was not duly apprized of charges to be investigated.

2. Ticket Clerk Felix J. Morris was observed to have been in the cashier's department during the time when the money disappeared, but was not called to testify.

3. A Lieutenant Ewing mentioned during the investigation, and who was connected with the Police Department, made some investigations but was not called upon to testify, nor was the outcome of his investigation made a part of the record.

4. It was not developed at the investigation or the trial that specific instructions were ever issued for the placing of Red Cap monies in a compartment. Rule 6-C-1 provides:

> "(a) An employe who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact charge for which he is to be tried and the time and place of the trial.
>
> (b) If he desires to be represented at such trial, he may be accompanied by the 'duly accredited representative' as that term is defined in this Agreement. The accused employe or the 'duly accredited representative' shall be permitted to question witnesses insofar as the interests of the accused employe are concerned. Such employe shall make his own arrangements for the presence of the said representative and no expense incident thereto will be borne by the Company."

Rule 6-D-1:

> "(a) If discipline is to be imposed following trial and decision, the employe to be disciplined will be given written notice thereof at least ten days prior to the date on which the discipline is to become effective, except that in cases involving major offenses discipline may be made effective at any time after decision without advance notice.
>
> (b) If the discipline to be applied is suspension, the time the employe is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension."

The Organization contends that the Claimant received a notice on September 26, 1947, to the effect that he would receive ten days' suspension

from October 5 to October 15, 1947, inclusive, and that this did not constitute the ten days' notice as provided in this rule. Further, that neither the transcript of the investigation nor that of the trial made provisions for signatures, other than that of Claimant, which is not proper since the person conducting the trial is a party thereto and the same was not attested to by the person taking the testimony. They contend, also, that Carrier's witness, Mr. M. K. Morrison, testified that: "Q. Will you tell where you generally find the Red Cap money when you report in the morning? A. As a rule, inside of the Cashier's office on the ledge, five days out of the week."

This, it is contended, showed the general practice followed by all clerks with reference to these funds.

The Carrier contends that the evidence shows Claimant was careless and that he was given a fair and impartial trial. On this general proposition there are cited Awards 71 and 373.

The principle defense of Claimant apparently is based on the general custom and practice of clerk in the handling of these funds, i. e., that the practice had been to place the same on the ledge in the cashier's department and not in the locked compartment. Also, that the wooden compartment was of such construction that it was replaced after the loss of the funds in question.

While custom and practice in any given situation must be given consideration, it is not the controlling factor in matters with reference to the safeguarding of funds. There is no doubt that on the record made in this claim, it had been the custom and practice of others besides Claimant to place these funds on the ledge as he did on the night in question. Also, that the wooden compartment with the lock in the cashier's department was not all that could be desired from a safety standpoint. However, it was the only locked receptacle provided and it should have been used in order to properly take all the precautions available to safeguard these funds. It is contended by Claimant that this wooden compartment was of doubtful value for the purpose intended. However, it would have been necessary to break the lock or to have used a key to take the funds. While this may not have been an adequate deterrent to one who contemplated stealing the funds, yet it would make the taking of these funds from the box more difficult, both as to breaking or the using of a key than the apparently simple act of taking the bag or sack from the ledge where it had been left. The result of the disappearance of the funds was an unfortunate one for Claimant and from the record we take it that no question of Claimant's personal honesty or integrity was raised or is involved herein. Certainly, such a thought is given on consideration in this finding.

Claimant raised some technical questions with reference to the trial given him. It cannot be said to be model in proceedings of this nature, yet, in the main, the procedure used is not sufficiently faulty to be the basis for a sustaining award. In the matter of the ten days' notice, apparently the issue raised relates to ten clear days as used in some statutes relating to the giving of notice in certain legal proceedings. Ten days' notice was given, however, not ten clear days. The finding will be that the notice given was a sufficient compliance with the rule cited.

In the matter of the disciplinary penalty assessed by the Carrier, it could be said to border on the excessive, in view of the record in this case. At any rate it is near the line and could easily have been more moderate; however, the action taken is not deemed to be so excessive that we feel that it should be disturbed by modification.

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 Employe involved in this dispute are respectively carrier and employe 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 not violated.

AWARD

The claim is denied.

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.