

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, 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; George I. Oakes, James Gordon and Jerre B. Hambleton, regularly employed Ticket Clerks, Wilmington Ticket Office, Wilmington, Delaware, be returned all monies in the amounts of \$870.12, \$311.04 and \$107.48, respectively, with interest at the rate of one half of one per cent per month until adjusted, because the Carrier arbitrarily forced them, by improper means, to pay the monies herein represented over a period from September 17, 1946, to June 13, 1947, costing them a loss in their earnings during the period involved. (Docket E-456)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimants hold positions, and the Pennsylvania Railroad Company, hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and which has also been filed with the National Railroad Adjustment Board.

This dispute was progressed to the highest operating officers of the Carrier by means of a Joint Submission. This Joint Submission is attached as the Employees' Exhibit "A" and will be considered as a part of this Statement of Facts.

Claimants George I. Oakes, James Gordon and Jerre B. Hambleton, regularly assigned Ticket Clerks, Wilmington Ticket Office, Wilmington, Delaware, with total accumulated service of 125 years, were forced by unilateral action of the Carrier to reimburse the Carrier, out of their earnings, for alleged shortages in various considerable amounts over a period of approximately nine months, beginning September 30, 1946.

On September 17, 1946, the account of Claimant George I. Oakes reflected a shortage in the amount of \$107.25, representing fifteen missing unsold excursion tickets reading "From Wilmington, Delaware, To Washington, D. C."

tion for employment every prospective worker is required to furnish information as to whether or not he has ever been indicted for or convicted of a crime. In addition, applicants are required to furnish other information indicative of their character as well as being subjected to the scrutiny of the employing officer. It might be said generally that every employe is potentially capable of committing some offense which would make him undesirable to his fellow employes. However, the Carrier is not always able to anticipate an undesirable act of an employe prior to the occurrence of such acts as in this case. Furthermore, the Organization has indicated that opposition would be presented should the Carrier attempt to eliminate an employe who is discovered to have furnished false information on his application for employment, thus giving the Carrier reason to suspect such employe as being undesirable. No complaint was received that the Janitor was undesirable prior to his apprehension.

The Carrier submits that the contention of the General Chairman in this respect does not support his claim.

The General Chairman further contended that since the Claimants were bonded employes, under such circumstances the restitution of the lost funds should be obtained from the bonding company.

It is sufficient to say here that the bonding company does not function in a situation of this kind. Also, the bonding company will not assume responsibility for funds so long as the employe involved continues to be in the employ of the Carrier.

The General Chairman contended that there is no requirement under the Rules Agreement, effective May 1, 1942, that an employe must guarantee the funds of the company which he handles, in order to obtain or retain a position under the Agreement.

The procedure followed in the accounting of ticket clerks has been explained elsewhere in this Submission. This procedure is followed by the employes and is understood by them. It should be clear that there are, on many occasions, credits to the account of Ticket Clerks, as it is not unusual on a day when the Ticket Clerk balances his account to later find that there is a credit due. Likewise, a Ticket Clerk may report that he is over in his account for a certain day although the Auditor's check may subsequently show a shortage. Thus, there is a continual problem with respect to the accounts of Ticket Clerks and in order to uphold the morale and discipline of all ticket offices it follows that the Ticket Clerk is responsible to make up any shortage sustained by him. This moral and legal obligation is generally accepted by Ticket Clerks. If a Ticket Clerk considers he has been wronged, the Agreement provides, in Rule 7-A-2, a method of appeal. It can readily be realized that confusion and chaos would result in Ticket Offices if the employes did not realize and accept this obligation and responsibility. In a situation involving a Ticket Clerk who is suspected of being irresponsible with regard to the handling of funds the Carrier can rely on the provisions of Rule 2-A-3 (qualifying rule) and Rule 6—(Discipline rule) in the handling of such an employe.

The Carrier submits that this argument is not germane to the real issue involved in this case.

In conclusion, the Carrier has shown that the responsibility for the losses sustained by the Claimants is theirs. The action of the Carrier in requiring the Claimants to make up the shortages in their accounts was in no way arbitrary or malicious nor were the earnings of the Claimants reduced during the period involved. There is no requirement under the applicable agreement that the Carrier reimburse them for their losses.

It is, therefore, respectfully submitted that your Honorable Board deny the claim in this matter.

(Exhibits not reproduced).

OPINION OF BOARD: The facts are not in dispute and are set forth in a Joint Statement of Agreed Upon Facts. On June 20, 1947 Station Cleaner

B. C. DeNeal was apprehended by the Carrier's police with 18 round trip coach ticket stock reading between Wilmington, Delaware and New York City and, under questioning, he admitted and signed a confession of thefts beginning Sept. 17, 1946 of \$870.12 in ticket stock from Claimants George I. Oakes, \$311.04 in ticket stock and \$1.79 cash from James Gordon, and \$107.48 in ticket stock from Jerre B. Hambleton. The Claimants have reimbursed the Carrier for the shortages in their accounts. The Organization made claim for return of this money and were refused.

The principal contention of the Claimants is that the action of the Carrier is a form of discipline and violated Rules 6-A-1 and 6-B-1 of the Agreement in not holding the formal investigation or trial contemplated under those rules. The Carrier states that none of the provisions of the discipline rules were invoked at any time, nor have the Claimants been subjected to discipline, and further states that the Claimants were not charged with laxity in this case, but the Carrier "denied their claim on the basis that the responsibility for the losses was theirs by reason of laxity in the handling of the ticket stock and monies entrusted them". In the following Awards, 4295, 4325 and 4296, all arising out of disputes between the same parties and same Agreement as this case, and involving shortages in Ticket Clerks' accounts, the claims were handled by the Carrier as discipline cases. In each instance, the Claimants were given a trial and a chance to testify even though the amount of shortage was far less than in this case. In the instant case, there is no evidence before this Board that the ticket stock was validated by the die or dater of the Ticket Clerk Claimants, nor that they were ever used for transportation on the Carrier's trains. There is no evidence that the cancelled tickets, all bearing serial numbers, were ever returned to the Carrier. There is no detailed evidence when the ticket stock was stolen, and whether the Claimants at that time were exercising due care or were negligent in handling the Carrier's funds while performing the duties assigned them by the Carrier. It is the opinion of this Board that the failure of the Carrier to reimburse the Claimants for the shortages charged them can only be a matter of discipline for their alleged laxity or negligence, and the conduct of the Carrier violated Rules 6-A-1 and 6-B-1 of the Agreement. If we were to agree with the Carrier that it should have the choice of deciding when shortages in Ticket Clerks' accounts were discipline matters, and when they were not, it would in effect vitiate the discipline rules in the Agreement.

However, even though the discipline rules had not been violated, we still would fail to see the merit in the contention of the Carrier. The parties agree that the thefts included both monies and tickets. However, the record in this case shows that the amount shown as charged to each Claimant, and stolen by the Station Cleaner, represents "tickets" and not "monies" with the single exception of \$1.79 cash shortage charged to Claimant Gordon. These tickets were not validated by the die or dater of the Ticket Clerks to whom they were charged, and there is no showing in the record that any of these tickets were honored by the Carrier, or that the Carrier suffered any actual loss in cash or equivalent in transportation by reason of the ticket stock having been stolen. The only proved monetary loss was \$1.79 in cash charged to Claimant Gordon. It clearly is the duty of the Carrier to show what loss it suffered since it and not the Claimants had the records of the tickets honored. The Carrier had the serial number of all tickets stolen as well as all returned and canceled tickets, and had the duty to advise this Board which and how many of the stolen tickets were used, to establish its monetary loss. It is clear that the action of the Carrier in charging the Claimants in the amounts shown was a form of discipline. It follows that this claim must be sustained for violation of the Agreement.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of December, 1949.