

Award No. 5980

Docket No. CL-6050

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, 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 seven days' suspension imposed upon H. R. Hamilton, Station Baggage man, Wilmington Passenger Station, Wilmington, Delaware, Maryland Division, be removed from his service record and that he be reimbursed for all monetary loss sustained by reason thereof. (Docket E-695)

OPINION OF BOARD: This is a discipline case. The Claimant, H. R. Hamilton, is regularly assigned baggage man, Wilmington Passenger Station, Wilmington, Delaware. He was charged as follows: "Failure to properly dispatch pouch from train No. 406 to train No. 122 on the date of June 9, 1949, at this station." Trial was had June 27, 1949, the decision being to suspend the Claimant for seven days, was rendered July 30, 1949, and put into effect September 27 to 30, and October 3 to 5, 1949. This discipline was appealed by the Claimant and denied by the Division Superintendent. The General Chairman of the Brotherhood progressed the claim to the highest designated office of the Carrier, and the appeal was finally denied January 10, 1950.

The case is properly before this Board.

It appears that on June 9, 1949, Claimant met train No. 406 where he received mail and also a mail pouch. This pouch was to be transferred to train No. 122. This work was in the line of duty of the Claimant. Train No. 122 is worked by baggage man Morris. The Claimant moved the United States mail, including the pouch in question, received from train No. 406 for the Wilmington Post Office by platform truck to the baggage room on the lower level of the passenger station and unloaded and placed the same at the door. Claimant then worked train No. 131, returning from this work at approximately 8:45 a.m. Claimant was approached by Morris who inquired of him in regard to the mail pouch he usually received for train No. 122. The transfer clerk, a postal employe stationed at the passenger station, was then notified the pouch was missing from the baggage room. He did nothing about it. The Claimant then telephoned the Post Office at Wilmington where the pouch was located. It had been picked up by the driver of the United States mail truck and delivered to the Post Office. This was shortly after 8:45 a.m. Train No. 122 did not leave the passenger station until 9:37 a.m. The distance between the Post Office and the passenger station is stated as being 13 blocks.

The Employee's position is (1) the fact that the charge on which the Claimant was given a trial and disciplined was not an offense of which he could be found guilty; (2) the unfairness and partiality of the trial; and (3) a review of the disciplinary action taken.

The Carrier takes the position that station baggageman Morris usually secured this pouch from the truck; that it was the responsibility of the Claimant to see that this pouch was placed at a location other than the one where he placed it, and to notify either Morris, as to the location of the pouch, or some other person who would be present in the baggage room where baggageman Morris came to secure this mail pouch.

The evidence developed at the trial discloses that the Claimant testified: "I brought it (the pouch in question) down from train and pulled it off truck with other mail at the door." He did not admit he usually left the pouch on the truck. He further testified "After I arrived from train No. 131 Bill Morris asked me about the pouch which he usually gets off the truck for train No. 122, as he meets train No. 122 and makes up truck." "I did report pouch missing but not through any mishandling on my part."

The witness McLain testified the Claimant reported to him at 9:30 A. M., that the pouch was short, and that he had talked to a person at the Post Office and the pouch was there. Claimant then reiterated the course of action he pursued after working train No. 131, which is heretofore set out.

The pouch was picked up between 8:30 and 8:45 A. M. by the driver of the Post Office truck. Claimant testified he did not misplace it. "I left it as we usually do." He did not notify the agent in charge immediately but did notify a postal employe, E. S. Spicer, working at the passenger station, which he thought was proper.

The agent in charge testified he thought the Claimant did the proper thing by reporting to E. S. Spicer, the postal employe, immediately. The Claimant testified responsibility for detention of this pouch is on the truck driver and Post Office, as they were notified in time to have it back for train No. 122.

In a letter written by station baggageman Morris April 23, 1952, appears the following: "It was always his practice (meaning Claimant) to bring this pouch downstairs, and to either hand it to me personally, or to put it on my truck for No. 122, or place it on the floor near my truck, but never to place it at the door among mail labeled "Wilmington Post Office." The Carrier was assessed a fine as a result of the failure of this pouch to be placed on train No. 122.

There appears to be no specific instructions as to how this pouch is to be handled, or for that matter any instructions that cover this subject. It is apparent that the pouch can be handled in at least three different ways: either the Claimant hands it to baggageman Morris, or places it on the floor near Morris' truck, or puts it on Morris' truck. Upon discovery of the loss of the pouch, the Claimant exerted his best efforts to locate it. In this he was successful, but unsuccessful in getting the pouch back in time for train No. 122. The evidence is insufficient to show the Claimant did not handle the pouch in the same way it had generally been handled previously. It appears that this is a joint responsibility to see that this pouch is placed on train No. 122. There is no evidence to the contrary. Under the Statement of Facts, Carrier did not make out a case against the Claimant.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.