

Award No. 10572

Docket No. DC-12397

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: It is the claim and request of the petitioning organization that:

1. The Respondent Carrier has violated the rules of the effective agreement by their unjust and discriminatory dismissal of Dining Car Steward Irvin F. Arnst from the service of the Carrier October 22, 1959.

2. Claimant shall therefore be restored to his former position with seniority and vacation rights unimpaired, and he shall be compensated to cover wage loss from date he was suspended from service on October 1, 1959, forward, until reinstated to his position of Dining Car Steward.

OPINION OF BOARD: This is a case involving discipline. There were two charges filed against Irvin F. Arnst, Dining Car Steward. Claimant herein, in a letter dated October 8, 1959 from R. L. Croft, Superintendent, Dining and Sleeping Car Service, reading as follows:

"Mr. Irvin F. Arnst
62 Wecker Street
Buffalo 15, N. Y.

Dear Sir:

You are hereby notified in accordance with the rules of this Company and the American Railway Supervisors Association to report at this office at 9:30 A. M., City Time, Friday, October 16, 1959, for investigation with respect to the following charges:

1. Failing to remit at Cleveland, Ohio, revenue derived from operation of dining service on Train 51, September 29, 1959; this in violation of Rule 34.

2. Failing to keep intact bank furnished you as change given by this Company, same having been found short when

verified by an authorized representative of this Company, September 30, 1959; this in violation of Rule 35.

Your attention is called to your right, under scheduled rules, to have representation at this hearing.

Very truly yours,

NEW YORK CENTRAL SYSTEM

/s/ R. L. Croft
Supt. Dining and
Sleeping Car Service"

Said notice was in accordance with Article X—Discipline, of the Agreement between the parties dated June 15, 1953, as amended, reading as follows:

"ARTICLE X—Discipline

(a) Stewards will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses, pending investigation or decision. Witnesses will be examined separately, but in the event of conflicting testimony, those whose evidence conflicts will be examined together. When a steward is subject to discipline for cause, decision must be given in writing and made effective within 30 days from date of official investigation.

(b) A Steward required to attend investigation may be accompanied by a representative of his own selection, who will be permitted to question witnesses so far as the interest of the steward is concerned. Notice of such investigation showing nature of the charge and time and place of investigation will be furnished such steward by letter mailed or delivered not less than 7 days prior to date of trial. Copy of such notice will be furnished the General Chairman and District Chairman.

(c) When letters of suspension or censure are given stewards they will be permitted to retain same.

(d) A steward who considers that an injustice has been done him and who has appealed his case to his Superintendent within 10 days, will be given a hearing at which he may be accompanied by a representative of his choice to assist in presenting his case. After his appeal has been acted upon by the Superintendent, he may, if he so desires, be represented before the Manager Dining Service by a representative of his own selection. Notice of such appeal to the Manager Dining Service must be given within 30 days following the date on which the decision of the Superintendent is rendered.

(e) The records of stewards who have suffered suspension and been found blameless shall remain as previous thereto, and they shall be paid for their net wage loss.

(f) Decision of the Manager Dining Service shall be final and binding unless within one year from the date of his decision such claim is disposed of on the property or proceedings for the final disposition

thereof are instituted by the employe or his representative and the Manager Dining Service is so notified."

The particular charges against Claimant are for violation of Carrier's Rules, the first violation set forth in the charges, alleges a violation of Carrier's Rule 34 and the second violation charges a violation of Rule 35, which rules read as follows:

"34—Stewards, waiters-in-charge, bartenders and other employes in charge are responsible for all monies received by them; must exercise the utmost care to prevent losses from any cause and must make remittance immediately upon arrival at turn-around, layover or terminal points."

* * * * *

"35—A strict accountability is required of employes who have been furnished change money, commonly referred to as a bank. Such banks are to be kept intact at all times and remitted for safekeeping to the Ticket Agent or Ticket Receiver in locked zipper bag provided for that purpose. Banks are subject to verification, from time to time, by authorized representatives of the Company."

In connection with the first charge the facts are as follows: Claimant left Buffalo on train #51 at approximately 1:30 P.M. and arrived at Cleveland at approximately 8:25 P.M. and was released from duty at approximately 8:55 P.M. He had received \$99.15 from dinner checks on said trip, and in accordance with Rule 34 should have made a remittance of said amount at Cleveland, before leaving for New York the next morning at approximately 6:15 A.M. This he did not do.

Claimant's explanation of this failure is that he only had one half-hour to finish his work at Cleveland and to turn in his money: that there was a long line of people at the ticket sellers window and he felt he would not be paid for overtime if he waited, so he put his money in the safe in the crew dispatcher's office. That he did not have time in the morning to turn the money in and he waited until his arrival in New York the next evening before turning in the dinner money he had received on the trip to Cleveland plus money received from Cleveland to New York.

We are not convinced that he could not have complied with the rule involved, but would not consider it too seriously, if it were not for the violation of Rule 35.

In connection with this charge; for clarification, it should be stated that it is customary for the Carrier to supply its stewards with change money, commonly referred to as a "bank", for their use in making change when cashing out customers' checks in the dining car. In this case, Claimant was furnished "200.00 as his "bank" and was given a locker zipper bag in which to keep these funds.

At Buffalo on the return trip from Cleveland, September 30, at about 10:05 A.M. Mr. E. Fields, Platform Supervisor, boarded the train and informed Claimant he wished to check his bank. Mr. Fields found Claimant's money bag in the back of the money drawer and there were no monies in it.

The check made by Supervisor Fields revealed that Claimant had on hand \$172.70, which included checks for dinner on train 51, for September 29, which

Claimant had not remitted at Cleveland amounting to \$99.15, checks covering receipts for train 90, for September 30, also not remitted, amounting to \$51.65. Thus Claimant, with his bank of \$200.00 if intact, should have had \$350.80. Claimant was present when the Supervisor did the checking.

Claimant denies that his bank was short: he admitted he knew that Mr. Fields was checking his bank, that he knew he had the bank funds intact; that he had additional funds belonging to the bank locked up in the upper buffet in "my money bag."

As stated in the foregoing paragraph, Mr. Fields stated the money bank was in the back of the money drawer. No explanation was made by Claimant of the other bank which he says was locked in the upper buffet. Claimant did not state or make any claim to Mr. Fields that he had the money belonging to his bank in any other place, his reasons being set forth in the following excerpts taken from the transcript, being part of his examination:

"51. Q—Mr. Arnst, in your statement concerning the reasons for your not remitting at Cleveland, Ohio, you mentioned some circumstances which existed there for you failing to remit in the office? I withdraw that question. Mr. Arnst, when Mr. Fields was checking your bank, were you aware that you did not have the complete total of money, the sums of monies which you should have?

A—I knew I had it.

52. Q—You knew you had your full bank?

A—Yes.

53. Q—Did you know at that time when Mr. Fields was checking your bank?

A—I knew it when Mr. Fields checked my bank, but at the time I was busy and I will state that considering this, after all my years, to have a man come over and check my bank enroute made me, I might say, nervous and excited and I was just in a position that I perhaps might say lost my head and forgot that I had additional funds belonging to this department locked up in the upper buffet in my money bag."

Claimant arrived in New York, that evening at approximately 7:15 P.M. from Buffalo; Claimant testified he became aware after leaving Buffalo, that he had not shown Mr. Fields all of his funds which he claimed made up the total of his bank. Upon his arrival in New York he saw Mr. Koch, a representative of the Carrier, who was making an inspection: he did not tell him about the checking of his bank at Buffalo; nor ask him to check his bank. He remitted the major portion of his receipts from Cleveland and his other collections. He did not request a check of his bank from the ticket receiver.

Claimant returned to Buffalo on Train 95 and met Mr. Croft, Superintendent of Dining Car Service, and was informed that he was being suspended from service: that his bank had been checked by Mr. Fields, who found his bank a considerable amount of money short and told Claimant to turn in his bank. Claimant did not then exhibit his bank, nor turn it in until the next day, when the full amount was turned in. Claimant said his failure to remit his bank

that night was that he had much loose change, many rolls, and he felt the envelope used for remitting would be insecure for dropping in the dropbox.

We have felt it necessary to discuss the evidence to the extent we have, because of the seriousness of the charge and the penalty assessed. The failure of Claimant to disprove the shortage in his bank at New York or when notified by Mr. Croft of his suspension, weighs heavily against Claimant.

This Division's policy over the years, as set forth in many Awards involving cases of discipline, has been that the following rules are applicable:

(1) Where there is positive evidence of probative force, we will not weigh such evidence or resolve conflicts thereon.

(2) Where there is real substantial evidence to sustain charges the findings thereon will not be disturbed.

(3) If the Carrier has not acted arbitrarily, without just cause, or in bad faith, its action will not be set aside.

(4) Unless prejudice or bias is disclosed by the facts and circumstances of record this Board will not substitute its judgment for that of the Carrier. Awards 6105, 5974 and Awards cited therein.

In this case there was positive, substantial evidence of probative force to sustain the findings. We find no evidence that Carrier acted arbitrarily, without just cause or in bad faith and no bias or prejudice was disclosed by the facts and circumstances of record.

The penalty, while severe, is justified, by the Claimant's previous record: this was not considered in the determination of his guilt or innocence of the charges involved here, but his past record may be considered in determining whether the penalty was justified, or too severe. We uphold Carrier's imposition of dismissal of Claimant.

The final question to be determined is the suspension of Claimant on October 1 pending filing of charges. The first sentence of Article X Discipline; reads as follows:

"Stewards will not be suspended or dismissed from the service without a fair and impartial trial: neither will they be held off duty for minor offenses, pending investigation or hearing."

Certainly the violation of Rule 35 was a serious not a minor offense and we uphold the Carrier in its suspension of Claimant.

In view of the foregoing, we find that the Carrier's action was not unjust, unreasonable or arbitrary. Claimant's claim should be denied in its entirety.

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 Carrier did not violate the provisions of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1962.