

Award No. 12491
Docket No. CL-14429

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5438) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1 to 7-A-1, inclusive, when it held F. D. Todd, Clerk, Ticket Office, Pennsylvania Station, Wilmington, Delaware, Chesapeake Region, out of service, and imposed discipline of dismissal from service.

(b) F. D. Todd be restored to service with all rights unimpaired, his record cleared, and that he be compensated for all wage loss sustained from May 9, 1962. (Docket 1302)

OPINION OF BOARD: The basic facts involved in this discipline case are undisputed. F. D. Todd, the Claimant, was employed in an extra clerical position at the ticket office; Passenger Station, Wilmington, Delaware with seniority date of January 11, 1961. On May 8, 1962, the Claimant was properly notified to report for trial on May 16, 1962, on the following charge:

"Theft of money from coin boxes on pay toilets in Men's Room, Wilmington Passenger Station, Wilmington Delaware, May 6, 1962."

As a result of said trial, the Claimant was dismissed from the service. In response to the Claimant's appeal from the discipline of dismissal, Carrier's Superintendent-Personnel notified him that he could return to service after passing a physical examination with the time out of service to be considered as a suspension, but that he was disqualified from holding any position the duties of which involved the handling of Carrier funds.

Thereafter, the matter was appealed by the Organization and the Claimant has not returned to work, being carried as furloughed.

The Organization contends that the following rules of the applicable Rules Agreement are pertinent:

"RULE 6-A-1

(a) Employees will not be suspended nor dismissed from service without a fair and impartial trial.

(b) When a major offense has been committed an employee suspected by the Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision."

"RULE 6-D-1

(a) If discipline is to be imposed following trial and decision, the employee 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 employee is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension."

"RULE 7-A-1

(d) When an employee is held out of service in connection with a major offense pending trial and decision, and the decision exonerates the employee so held out of service, the employee will be compensated for the difference between the amount earned while out of service or while otherwise employed and the amount he would have earned had he not been held out of service."

The Carrier contends the instant claim is without merit and should be denied in its entirety.

THE ISSUES

- 1) Whether or not the Claimant was guilty of the offense with which charged;
- 2) Whether or not he had a fair and impartial trial; and
- 3) Whether or not his record should be cleared and he be compensated for all wage loss sustained as provided in the applicable rule — Rule 7-A-1(d).

The chain of events culminating in the ultimate dismissal of the Claimant occurred between May 1, 1962 and May 8, 1962. The Baggage Foreman was required to remove coins from the boxes on the pay-toilets in the men's room located in the Passenger Station. On May 1, 1962, he discovered that several boxes were short, based on the registering device. No subsequent shortages

occurred on the 2nd and 3rd of May, however, on May 4th the Carrier's Police Captain dusted the inside of each coin box with an invisible fluorescent powder. On May 7th, several officials of the Carrier opened said boxes and found a total of \$5.20 short of the registered amount. Thereafter, all but three employees having possible access to the pay-toilet coin boxes were examined by placing their hands under a ultra violet lamp. The only employee showing traces of the powder on his hands was the Claimant and no further effort was made to check the hands of the three remaining employees.

The Organization argues that the Carrier conducted its investigation in a somewhat careless manner, suggesting among other things, that the Police Captain was not qualified to use the fluorescent powder; that the keys to the coin boxes should have been examined under the lamp; and, that the three employees not tested should have been.

We have carefully reviewed the transcript of the record and are satisfied that such assertions by the Organization are without merit. Insofar as the three employees who were not tested, the record discloses that none of them would have had access to the keys to the coin boxes at any time during the period in question. The decision to make the powder test was reached after the original theft on May 1st and the propitious time selected was over a weekend when there would be no check of the coin boxes until Monday, May 7th.

The contention that the Claimant was found guilty on the basis of the testimony of one person is without foundation in fact. No charges were placed against the Claimant until after the coin boxes had been examined by several officials of the Carrier and the shortage recorded. Only after the lamp test disclosed traces of powder on the Claimant's hands, was he charged with the offense.

Although the Claimant denies that he is guilty of the charge against him and offered to submit to a lie detector test, the record contains substantial evidence in support of the action taken by the Carrier. The mere fact that the evidence is circumstantial, makes it no less convincing and the Board cannot say as a matter of law that the Carrier was not justified in reaching its conclusion following the trial. (Awards 4808, 6536 and 7657.)

It is also contended by the Organization, that the Claimant was not afforded a fair trial because all of the questions and statements of the Carrier's witnesses indicated a prior presumption of his guilt. This contention is refuted by the Claimant's own statements at the trial. Moreover, the Claimant took no exceptions to questions asked of him and waived his right to be represented. We find that the Claimant had a full, fair and impartial trial and that there is nothing in the record to substantiate a charge or sustain a finding of arbitrary or capricious action on the part of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1964.