

Award Number 13353

Docket No. CL-14981

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5619) that:

1. The Carrier violated the Clerks' Agreement when on December 20, 1962, it summarily dismissed W. F. Hines, Clerk, Houston, Texas, from service.
2. Clerk W. F. Hines shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
3. Clerk W. F. Hines shall now be compensated for all wage and other losses sustained account this summary dismissal.
4. Clerk W. F. Hines' record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: Claimant W. F. Hines had been continuously employed approximately 8½ years in Carrier's Ticket Office at Houston, Texas as of December 20, 1963 when he was issued notice of dismissal from service following an investigation held on the property. The subject claim protests this dismissal action.

It was not unusual for Ticket Clerks at this location, including claimant, to experience shortages and overages in their daily balances. Beginning in late November 1963 claimant had a series of daily shortages of varying amounts which were substantially in excess of his overages. On December 4, 1963 he paid the Carrier \$21.10, which left an accrued shortage of \$21.03 in his accounts. He had another shortage on December 5 but on that date he paid the Carrier \$13.41, leaving an accrued shortage of \$10.07. On December 6-8 he reported \$1.10 short and on December 9, 1963 claimant's daily balance indicated a shortage of \$87.60. He remained 1 hour 15 minutes beyond his quitting time on December 9 in an attempt to locate the latter shortage. Claimant's supervisor, Station Agent R. L. Robertson, assisted him in this endeavor. The claimant

returned to the Ticket Office in the evening of the same day to further investigate this shortage but his efforts were without avail. The following day the Carrier's IBM report verified the \$87.60 shortage for December 9 and sometime after 3:45 P.M. on the same date (December 10) Claimant Hines received a written notice from the Ticket Office Cashier, W. Reibenstein, reading: "You are \$98.77 short in your daily remittances through Dec. 9th. Please Remit." The requested amount of \$98.77 represented the \$87.60 shortage of December 9 plus the balance due from claimant's prior shortages as indicated above.

Claimant Hines went off duty at his usual 4:30 P.M. quitting time on December 10 without paying the amount requested and without making any comment thereon to the Carrier. December 11 and 12 were claimant's rest days. On December 12, having heard nothing from the claimant regarding payment of the accrued shortage the Carrier issued claimant written notice of formal investigation to be held on December 16, 1963 on the charge of "your responsibility, if any, in connection with reported irregularities in the performance of your duties as ticket clerk on the dates listed below, in that there were reported shortages in your remittances to the Cashier of: . . ." The notice also advised that claimant was being held out of service pending outcome of the investigation. Claimant Hines received this investigation notice on December 12 and on December 13 he paid the Carrier the accrued shortage amount requested in the Cashier's notice of December 10. The investigation was held as scheduled and the Carrier issued notice of dismissal on December 26, as previously indicated.

The Organization contends the Carrier's notice of investigation did not comply with the Agreement Rule 26 requirement that such notice shall state "the precise charge." We find, however, that the subject notice was sufficiently precise to advise claimant of the subject matter of the charge so that he could prepare an adequate defense—this being the purpose of the quoted language of Rule 26. The claimant also was given a "fair and impartial trial," as required by Rule 27.

On January 29, 1963 Station Ticket Agent Robertson had issued a written notice to all Ticket Clerks reading: "Effective date when you complete your daily balance and a shortage exists, you will be required to make any adjustments with cashier the following day." As was required of all Ticket Clerks by the Station Ticket Agent, Claimant Hines gave written acknowledgment that he had read this notice, that he understood it and that he would comply therewith. Following the introduction of IBM equipment, however, the Ticket Clerks were not held liable for an apparent shortage in their daily balances until the IBM report verified the shortage the following day. Moreover, small shortages which were not balanced off by the involved clerk's overages were often allowed to "ride" to the end of the month, when they were deducted from insurance commissions the clerk had earned. Clerks were required to pay larger shortages (\$5.00 or over) promptly, however, but if an employee requested additional time to make payment, the Carrier customarily granted same.

The record indicates that beginning late in November 1963 Claimant Hines had unusually frequent and large shortages. The evidence further shows that the Carrier had been allowing the claimant time beyond the 24 hour period to pay his shortages. But when claimant's accrued shortages reached almost \$100.00 the Carrier was entitled to expect either prompt payment or some indication from the claimant concerning when he would be able to pay the amount due. Carrier could not reasonably be expected to allow claimant to continue a "running balance" of substantial accrued shortages indefinitely, without special

arrangements being agreed upon. It was claimant's responsibility to initiate discussion with the Carrier concerning such arrangements.

When no word was received from the claimant by the morning of December 12, the Carrier had reason to commence disciplinary proceedings. The fact that claimant paid the full accrued shortage the day following his receipt of the investigation notice did not void the basis for disciplinary action. The Carrier has a responsibility for ensuring that its funds are properly handled. This responsibility extends to Carrier's protection of itself against undue carelessness and inefficiency as well as against fraud. There is no contention that claimant was dishonest but he was unduly careless. We conclude that claimant's conduct provided sound basis for disciplinary action, and that Carrier did not act discriminatorily in determining that discipline was warranted.

This brings us to the extent of the penalty assessed against Claimant Hines. So far as the record discloses, no prior disciplinary action had been taken against him during his 8½ years of service. It is our view that dismissal was an excessive penalty under the circumstances. We conclude that claimant should be reinstated with all rights unimpaired but without monetary compensation.

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 Employee involved in this dispute are respectively Carrier and Employee 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 disciplinary action was warranted but the dismissal from service was an excessive penalty.

AWARD

Claim sustained to the extent shown in Opinion.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.