

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward A. Lynch, Referee

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**PARTIES TO DISPUTE:**

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

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5821) that:

(1) The Carrier violated the terms of the current Clerks' Agreement at Memphis, Tennessee, when it arbitrarily and discriminately dismissed from its service Messenger A. A. Ware on September 27, 1964 without advice of the precise charge or charges against him and without proper justification.

(2) Carrier shall now return Mr. Ware to service with pay for all time lost and with all other rights unimpaired and clear his record of all charges arising from the investigation conducted on October 3, 1964.

(3) Carrier shall compensate Mr. Ware a day's pay for each work day at the established rate of pay of his messenger position, including subsequent wage increases and other benefits, beginning September 27, 1964 as reflected by the Carrier's payrolls and other records.

**OPINION OF BOARD:** A careful examination of the parties' presentations here requires a sustaining award for the following reasons:

1. Carrier's notice of investigation "to develop the facts and determine your responsibility, if any, for violation of Rule 702, Rules of the Transportation Department on September 10, 1964 and September 27, 1964" fails to meet the Rules Agreement requirement that the accused be "advised in writing of the precise charge or charges." (Emphasis ours.)

Rule 702 contains five paragraphs with at least twenty separate transgressions covered.

2. The evidence consisted of two coins, with marks placed on them by Carrier's investigators, which the investigators had placed in the jar, or "coffee kitty" where all employees normally and voluntarily place a coin when they take a cup of the available coffee.

3. Substantial testimony in the record that employees desiring coffee quite often must, and do make their own change if they do not have the correct

coins. Thus, the change in the jar is at all times available to many people who might, if so inclined, steal from the jar.

4. Claimant's testimony — without contradiction — that on the preceding Friday when he had taken a cup of coffee, there was not enough change in the jar for the dollar bill he had.

He testified.

"... so I took this dollar bill and stuck it in the jar. It was an old dollar bill, and it was torn and I was off on Saturday and I was going to come back on Sunday and get my change."

5. Witness J. McLelland, who handles the coffee money, testified that when he came to work on Monday,

"in my middle drawer was a folded one dollar bill somebody had stuck between the crack in this drawer and I don't know who put this dollar there. . . ."

McLelland also states under such circumstances he "had to assume that somebody drunk some coffee and took out the correct change."

This Claimant admitted that he took coins from the jar to make up the change for the dollar bill he left on Friday. He was unaware that he was taking marked coins placed there by Carrier's investigators until they later accosted him with their "evidence" in his pocket.

We accept the Claimant's testimony; and we find no proof of dishonesty.

Under such circumstances we believe Carrier's action in discharging Claimant to be an arbitrary exercise of its power to discipline. A sustaining Award is required.

**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 Employes involved in this dispute are respectively Carrier and Employes 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: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1966.

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