

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Francis X. Quinn, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION DIVISION, BRAC****PENN CENTRAL TRANSPORTATION COMPANY
(New Haven Region)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company (New Haven Region), that:

1. Carrier's action in dismissing Mr. Donald F. Burns was arbitrary and has placed Mr. Burns in double jeopardy, by dismissing him and forcing him to repay the alleged shortage.

2. Carrier shall now reinstate Br. Burns and pay him for all time lost.

OPINION OF BOARD: This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory when the Carrier does not apply and enforce the rules with reasonable uniformity for all employees; when rule violation by an accused employee is not established by substantial evidence; when a timely hearing after notice on specific charges is not held in accordance with the provisions of the Parties' Agreement; when the accused is not allowed to have representation, to testify, and if he wishes, to have other witnesses in his behalf; when the Carrier's managerial representative acts as chief witness as well as interrogator and judge (obviously it is permissible for said representative to act as interrogator and judge); or when the degree of discipline is not reasonably related to the seriousness of the proven offense.

In judging the above, mindful that the Carrier has the burden of proving its charge and of showing its conduct and decision were not unreasonable, the Board will not go beyond the record developed at the Carrier's investigation.

The Claimant in this dispute was charged with and found guilty of being responsible for three shortages in his station accounts.

The Claimant's admission of a \$10.00 shortage and a \$10.00 error in computation leaves no doubt that he was responsible for the shortage in his account at Riverside Station on May 13, 1968.

The second shortage mentioned in the notice given to Claimant is one for \$63.20 at Milford Station as developed by an audit made on November 6, 1968, by the New Haven Railroad auditor. The record indicates some irresponsibility on the part of the handling of his station account. While the Claimant did not refuse to make restitution of the alleged \$63.20 shortage at Milford, he had written the Superintendent, disagreeing that a shortage did exist. He did offer to meet with the interested parties at the station and discuss the matter.

The third shortage mentioned in the Carrier's notice to Claimant was in the amount of \$57.11 at Milford Station as revealed by the Company audit on June 14, 1968. While the record does indicate some irresponsibility in the Claimant's method of handling his accounts, it also establishes a breakdown in regular office routine, the recovery of the shortage and some confusion about whether alleged shortage of tickets were obsolete forms that had been sent to the Auditor of Passenger Receipts.

The record indicates some negligence on the part of the Claimant and also that he was not **solely** responsible for much of the recorded confusion.

Claimant raised some technical questions with reference to the trial given him. It cannot be said to be model in proceedings of this nature, yet the procedure was not sufficiently faulty to be the basis for a sustaining award.

The Employee's contention of double jeopardy has no weight or merit. The fact that Claimant was required to repay the money was not discipline but was the repayment of a legitimate debt owed to the Carrier as the result of the Claimant's negligence in handling his station accounts.

This brings us to the extent of the penalty assessed against Claimant. 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 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 violated to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1970.