

Award No. 18121
Docket No. CL-18404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6651) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly Rules 6 and 7, among others, when it unjustly and unfairly, without evidence, ordered Ticket Receiver Clerk Vallasso (under protest) to pay an alleged one hundred (\$100.00) dollars remittance shortage on May 14, 1968, as a form of discipline.

2. The Carrier shall reimburse Ticket Receiver Clerk Vallasso the \$100.00 he was unjustly and unfairly ordered to pay (under protest) almost a year after the occurrence of the alleged shortage.

OPINION OF BOARD: This is a discipline case. Carrier had the burden of proving the charge by a preponderance of material and relevant evidence of probative value.

Claimant, a Cashier, was served with the following Charge (emphasis ours):

"Please arrange to be present in the Office of Director of Accounting, LIRR, Fifth floor, Jamaica Station, Jamaica, New York on Friday, June 21, 1968 at 10:00 A.M., to attend trial in connection with the following:

Violation of that part of Paragraph 12(C), The Long Island Rail Road Manual of Instructions, as revised July 15, 1966, issued by the Accounting Department, Form A.D.L. 206, which reads, 'Shortages must be made good promptly, unless overages reported within a period of six (6) months immediately prior thereto are directly applicable to the account which is short.'

Shortage of May 14, 1968 has not been settled to date.

You may if you so desire, be accompanied by one or more persons of your own choosing, without expense to the company.

You may produce witnesses in your own behalf without expense to the company and you or your representative may cross examine witnesses.

You will be expected to be present throughout the entire trial.

Sincerely,

/s/ M. G. Smith
Ticket Receiver"

From the transcript of hearing, held on June 21, 1968, we excerpt, with emphasis supplied, from the testimony of M. G. Smith, Ticket Receiver — Carrier's sole witness:

"A. I am responsible for the cash reports and bar car reports that are accepted by the cashiers and the accounting of the monies.

Q. When you say cash reports, where do the cash reports emanate?

A. From the trainmen and the bar car reports from the Special Service Department attendants.

Q. Would you explain what transpires with the cash reports and the bar car reports; what exactly happens here?

A. The trainman turns over to the cashier cash report form ADL 6251 and the duplex represented by that report and the cash represented as the total cash deposited. The cashier then makes a record on form ADL 6185 of these reports. The cashier at the end of the day then remits all monies received in this connection.

Q. Does the cash report represent monies collected by trainmen?

A. Yes.

Q. And the same applies to the bar car receipts as this represents monies collected by bar car attendants?

A. Yes.

Q. On May 14, 1968 cashier Vassallo reported a \$100 shortage in his accounts?

A. No, he did not. But a \$100 shortage exists in his accounts for that day.

Q. After it was determined that in fact a \$100 shortage did exist, would you tell me what procedural steps you took?

A. I first had all of his cash reports and bar car reports run up on an adding machine tape. I found these amounts to be the same as cashier Vassallo had reported. I then contacted the

Chemical Bank to determine whether there was a possibility of an error on their part. I spoke to Mr. Robb. He informed me that he had counted the money in Mr. Vassallo's deposit for May 14, 1968 when he found that it did not correspond to the amount shown on the deposit slip by Mr. Vassallo, he then turned the deposit over to an associate who recounted the money. Both persons came to the same sum.

Q. The deposit slip for May 14, 1968 submitted by cashier Vassallo indicated a total deposit of \$3,237.71. Is it not true that the Chemical Bank, after checking the deposit slip and the monies represented, was in fact \$100 short?

A. Yes.

Q. Did you interview the Manager of the Chemical Bank after you learned of this?

A. Yes, I did. I spoke to Mr. Santoro who is the Manager of the Penn Station branch, Chemical Bank New York Trust Company.

Q. In reference to the question of this \$100 shortage, did you request of Mr. Santoro that he indicate the absolute procedural steps that are taken when the monies and deposit slips do not coincide?

A. Yes.

Q. Would you follow those procedural steps to the best of your knowledge?

A. He advised me that when the person opening a deposit finds that the monies therein do not coincide with the amount shown on the deposit slip, he then turns the deposit over to an associate for a recount. If the second person also finds the same amount of money in the deposit, they then turn it back to the first person. That person then amends the deposit slip to show the actual amount received in the deposit. He then puts the bank's stamp on it to verify that it has been counted and accepted as that amount.

Q. You mentioned the fact that when these amounts do not coincide that the first individual finding a discrepancy has an associate who attempts to reconcile. Did Mr. Santoro indicate whether or not these two individuals sat immediately next to one another?

A. Yes, he did.

Q. Then, in your opinion, there would be little doubt as to the accuracy of the count?

A. Yes.

* * * * *

Q. Is it not true that when such a discrepancy exists, the bank in turn notifies the Long Island Rail Road Treasurer of such discrepancies?

A. Yes, and they in turn notify me.

Q. The bank, of course, accepting and allowing credit on the basis of their findings. Is that correct?

A. That is correct.

* * * * *

CROSS-EXAMINATION OF MR. M. G. SMITH
BY MR. DON WALDMAN

Q. At approximately what time did the bank notify you that there was an error in Mr. Vassallo's remittance of May 14, 1968?

A. The afternoon of Wednesday, May 15, 1968. The deposit was taken from our U. S. Trucking Safe on the morning of May 15, 1968.

Q. To the best of your knowledge, would you say it was between four, or maybe five hours after the remittance was delivered that you were notified?

A. About four hours.

Q. Did Mr. Santoro at any time indicate to you at what time Mr. Robb counted Mr. Vassallo's remittance?

A. No, he did not.

Q. Did Mr. Santoro tell you approximately what time Mr. Robb and his associate, whoever this may be, checked Mr. Vassallo's remittance?

A. No, he did not.

Q. Would you agree that it is quite possible this Mr. Robb could have counted the remittance at approximately 1 P.M. and an associate counted this same remittance at 2 or 2:30 P.M. Would you agree this could happen?

A. As I was not present when any of the counting was done, I would not be able to make such an assumption.

Q. In other words, we are all taking Mr. Santoro's word that this money was counted by a Mr. Robb and then an associate immediately after Mr. Robb? Is this correct?

A. Not exactly. Mr. Robb's stamp on the deposit slip as well as his word that he counted it would be the basis for Mr. Santoro saying this.

* * * * *

Q. At any time does a representative, other than the remitter, of the carrier check or recount any remittances submitted by any clerks working for you before they are deposited in the bank?

A. No.

Q. On May 14, 1968, no one checked Mr. Vassallo's remittance. Is that correct?

A. No representative of the carrier recounted the remittance before it was placed in the deposit bag.

* * * * *

Q. Are you saying that Mr. Vassallo was in fact definitely short \$100?

A. From all information available to me, this is correct. A \$100 shortage exists in his accounts.

* * * * *

Q. At this time can you absolutely, without a doubt, prove in any way other than the word of the bank that Mr. Vassallo did not in fact remit \$3,237.71 on the morning of May 15, 1968?

A. No other way than the verified, stamped deposit slip is deemed adequate for my belief that the actual amount in the bag was \$3,137.71.

Q. You, as a witness for the carrier, are taking the word of the clerk in the bank that this remittance was in fact short? Is that correct?

A. The clerk and the associate both counted this money and it is the word of those persons as evidenced by the stamped TDL 53 that I am taking.

* * * * *

Q. Would you agree that this alleged shortage is basically suppositioned on the part of the bank and in no way can you, or this carrier, possibly prove for a fact that Mr. Vassallo did not remit the twenty \$5 bills in question?

A. I do not agree that this is a supposition on the part of the bank. This is by the verification of their employees.

Q. Then what you are saying is that somebody from this railroad actually, and factually, counted Mr. Vassallo's money before it went to the bank?

A. No. I made no such statement.

Q. Why then, sir, did you say that you agreed that Mr. Vassallo was in fact short \$100 when this money was never even counted by anyone from this Long Island Rail Road other than Mr. Vassallo?

A. The bank has so advised me that the lesser amount of \$3,137.71 was the amount that was in the bag as counted by their employees.

Q. For the record, are you then stating that you, as a representative of this carrier, are taking the word of a bank clerk over a clerk who works for the Long Island Rail Road?

A. I am accepting the statement of the bank that the amount that they stipulated was actually the amount that they received. There are other areas where Mr. Vassallo might have made his mistake and also in his calculation of his deposit and that in actual fact, the money that he put in there was \$3,137.71 although he presumed it to be \$3,237.71.

Q. You just made a statement to the fact that the bank in actual fact, received Mr. Vassallo's remittance and it was \$100 short. Are you absolutely sure that this was the amount turned over to the bank as you stated?

A. I have no reason to believe otherwise.

* * * * *

Q. Would you please relate in minute detail the procedures followed by cashiers the moment their account is balanced to the time such deposits are delivered to the Chemical Bank?

A. The sealed bag is placed in a cylinder drop type safe by the cashier. It is removed the following day by use of two keys. One held by a messenger of U.S. Trucking; the other in our change safe. The amount stated on the tag of each deposit is totalled and the Brinks messenger issues a receipt to my office acknowledging receiving this amount of money. The messenger, accompanied by a guard, takes these deposits to the bank and turns them over to the bank's representative.

* * * * *

Claimant testified: (1) the amount collected by him on May 14, 1968, balanced by him, was \$3,237.71 and such amount with remittance form was deposited by him in the cylinder drop type safe; (2) he was not called by any representative of the bank to go over or recount the remittance; (3) the bank arbitrarily, without consulting him, changed his figures on the remittance statement; and (4) no person employed by Carrier counted the remittance prior to his depositing it, as required by Carrier, in the safe.

Carrier made the following findings of guilt and assessment of discipline:

"LONG ISLAND RAIL ROAD
NOTICE OF DISCIPLINE FOR OFFENSE OCCURRING
ON ACCOUNTING DIVISION

No.....

July 15, 1968

Name: Frank Vassallo

Occupation: Cashier

Home Division.....

Discipline: Pay shortage of \$100.00

.....

Date of Occurrence: May 14, 1968 Engine..... Train.....

Place: Ticket Receiver Office, New York, Penn Station

OUTLINE OF OFFENSE:

Violations of Paragraph 12, Section C of the Accounting Department Instructions ADL 206 as revised July 15, 1966, which reads in part 'shortages must be made good promptly unless overages reported within a period of six months immediately prior thereto, are directly applicable to the account which is short.' (Emphasis ours.)

All appeals were denied on the property.

Being importuned by Carrier, Claimant, with protest, paid Carrier \$100 on April 7, 1969.

The testimony of Carrier's sole witness as to whether there was a 'shortage' as alleged in the Charge is hearsay, presumptions and opinions. It is not material and relevant evidence of probative value. Consequently, Carrier failed to satisfy its burden of proof. The credibility of Claimant was not impeached. Further, Claimant was not afforded due process in that Carrier failed to call to the witness stand employees of the bank who were eye witnesses whom Claimant had the right to cross-examine. In the absence of such cross-examination the Hearing Officer, not having observed demeanor, was incapable of resolving credibility. For these reasons we will sustain the Claim.

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 Carrier did not satisfy its burden of proof.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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