



Award No. 18239
Docket No. TE-18522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 of BRAC on the Penn Central Company, New Haven Region, that:

1. It is impossible for the New Haven Railroad employes to comply with the terms of Assistant Treasurer W. C. Hildebrand's bulletin dated October 11, 1963, as it is written.

2. There is no known rule of the New Haven Railroad, nor any agreement between the Carrier and the Employes, authorizing the Carrier to discipline an employe for non-conformity to a rule of the Carrier by the levying of a fine of money against such an employe; there is no precedent for the decision of the Superintendent in this case.

3. Agent V. E. Gay has been a trustworthy employe of the New Haven Railroad for approximately 27 years and the TCEU take the position that the decision to hold him responsible for the amount of \$335.73, which is the amount of the Carrier loss in the robbery, constitutes a libelous defamation of his good reputation and character.

OPINION OF BOARD: On October 3, 1968, the Claimant left the office to make a bank deposit for the Carrier. This was part of his prescribed duties. He locked the window and door of his office and left other cash in the till of his cash drawer. In his absence, thieves broke into the office and stole \$335.73 from the cash drawer. The thieves were later apprehended, but the money was not recovered.

An investigation was held on October 16, 1968. After the hearing, he was found to have failed to follow explicit instructions to place all monies in the station safe and lock it whenever he is required to leave the station. As a discipline, Claimant was required to make restitution in the amount of \$335.73.

The record shows that the Carrier has recovered \$185.73 from an insurance carrier. Petitioner contends that the Claimant should not be required to pay the difference of \$150.00 and instead should be given a disciplinary warning.

The Board has no power to go beyond the issues in the Statement of Claim. And that is confined to the question whether the Carrier had the right to direct the Claimant to make restitution. A restitution in the amount stolen is not an excessive penalty. And this is properly so because the most Carrier can now recover from the Claimant is \$150.00. Such a penalty for the violation of explicit instructions is neither arbitrary, capricious nor unreasonable.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1970.