

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20267  
Docket Number CL-20323

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees

PARTIES TO DISPUTE: (  
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7367) that:

1. The Carrier violated the Agreement when it dismissed Clerk H. J. Ludwig on charges not proven, and when he was reinstated through appeal he was put back to work with no pay for time lost; such action by the Carrier being improper, unjustifiable, unreasonable, capricious and unwarranted; and

2. Carrier shall now be required to pay Clerk H. J. Ludwig for all time lost from August 24, 1972, date he was unjustly taken out of service until the date he was reinstated October 27, 1972; and

3. That his record be cleared of all charges and allegations.

OPINION OF BOARD: Claimant was charged with committing a dishonest act, namely; keeping a gratuity that had been entrusted to him. After investigation, he was terminated.

During the appellate process on the property, Carrier noted that the Claimant's employment record was "unblemished" and restored him to service.

Claimant's time lost was approximately two (2) months.

A lengthy recitation of the facts is not necessary. Basically, on April 14, 1972, a Trainman (S) found an attache case on a train. He telephoned the owner and it was agreed that the owner would retrieve the bag at Lost and Found, and that the owner would leave a gratuity for S. On the following day, S asked Claimant if any gratuity had been left for him. Claimant said "no." Thereafter, S contacted the owner again, who assured that a \$3.00 tip had been left when the attache case was picked up. The owner described Claimant as the individual who received the gratuity. S stated that when he again confronted Claimant and advised him of the discussion with the owner, he again denied receipt of the \$3.00 and stated that he "wasn't a collection agency."

Claimant admits receipt of the gratuity, and states that he placed same in the safe. He also presented a statement from another employee who states that on April 16, Claimant advised him that he had placed a reward of \$3.00 in the safe. Claimant admits that he denied receipt of the gratuity when S first inquired, but he was quite busy at the time. At the second confrontation, Claimant states that he did not deny receipt of the money, but, rather, stated that S should contact the Station Manager.

The main thrust of Claimant's testimony is that he never intended to convert the three dollars to his own use, but merely desired to bring the "entire matter to a head" because he did not feel that Lost and Found employees should be used as collection agencies. He conceded, "...I realize that I handled it rather badly..."

We are aware of the long series of Awards holding that this Board should not substitute its judgment for that of Carrier and attempt to make credibility determinations, as long as the Carrier has established its case by a substantive preponderance of the evidence. Even if Claimant were to be given the benefit of all conflicts in the testimony, we feel that the Carrier established a dishonest act. Assuming that the Trainman had no right to solicit a gratuity and no legitimate claim to the money, clearly, neither did Claimant. Claimant's admitted denial on at least one occasion, of possession of the money amounted, at least, to a wrongful appropriation, even if there was no intention to permanently deprive S of the money. Even if his motives were good, Claimant chose a rather dangerous road to prove a point.

A two month suspension, even considering the record in the most favorable light to Claimant, cannot be considered as so excessive as to constitute an arbitrary or capricious abuse of discretion.

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

Award Number 20267  
Docket Number CL-20323

Page 3

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.