

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20663

Docket Number CL-20489

David P. Twomey, 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-7439) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, Rules 6, 7, 7-A-2, 9-A-1, 9-A-2, among others, when it took Ticket Clerk S. Bartnicki out of service on March 23, 1972 and failed and/or refused to give him a Hearing and/or Trial.

2. The Carrier shall pay Ticket Clerk S. Bartnicki a day's pay (8 hours) at the pro rata rate of pay for each day he is withheld from service effective March 23, 1972 and for each day thereafter until he is returned to service and given a fair and proper Trial before invoking discipline.

OPINION OF BOARD: On March 23, 1972, the Claimant was advised by the the Carrier that he was "being held out of service for falsification of Company records resulting in a shortage of money at Stewart Manor Passenger Station". On June 14, 1972, Claimant requested a hearing. Carrier responded that because of the criminal nature of the charge, the Company trial would not take place until the outcome of the criminal action was reached. Claimant was indicted for "Grand Larceny, Second Degree" and subsequently pled guilty to "Grand Larceny, Third Degree". On November 9, 1973, Claimant was sentenced to 5 years probation and was required to make restitution of the \$12,000 shortage. A Company trial was held on November 26, 1973.

The principle thrust of the Organization's case is not one concerning the guilt or innocence of the Claimant, but centers on a procedural argument that Claimant was withheld from service an inordinately long time without the required hearing under the Parties' Agreement. A line of Awards of this Division support the contention that when no specific time limits are provided in the discipline rule, Carrier is required to grant a trial within a reasonable period of time. In this case, however, the Claimant didn't even see fit to show up for his own trial when it was eventually held. The following discussion (Transcript page 2) between the Hearing Officer and the Claimant's representative is of interest:

"MR. SABINA TO MR. WALDMAN

Q. Mr. Waldman, it is this Company's desire to hold this trial in abstentia(sic). Do you have any objections?

A. Mr. Sabina, I have no objections at this time, but I would like to ask if we can postpone the opening of this trial for approximately one (1) hour. I have just spoken to Mr. Bartnicki on the telephone and I have informed him that we are all here and present and ready to commence with his trial. I asked him if he would make 'an effort to get here within the next hour' and his response was that 'I cannot guarantee it Don, but I will try the best I can.' I further asked Mr. Bartnicki if two (2) hours would be sufficient time and he stated he has 'other business to attend to and it will be a hassle to get to Jamaica. If they demand to start the trial, let them go ahead and do so and I will try to arrive later on.'"

The particular circumstances revealed in this dispute do not warrant overturning Carrier's decision of dismissal of this employee. Indeed, the question of the Claimant's guilt or innocence is not denied and, in fact, is not before the Board.

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 invoved herein; and

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1975.