

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23075
Docket Number CL-22796

Richard R. Kasher, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employes
{ The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8700) that:

(a) The Carrier violated the Clerks' General Agreement when as a result of Investigation conducted on May 1, 1975 they administered discipline of ten (10) days actual suspension to Mr. Douglas Konow.

(b) Claimant Konow should now be made whole for all loss of wages and wage equivalents as a result of this discipline and that his record be made clear.

OPINION OF BOARD: Claimant Douglas Konow was regularly assigned as Relief Clerk, Rockwell Street Yard, Chicago, Illinois, with a seniority date of May 27, 1971 on the Chicago District, Transportation Department Clerks' roster. His record was clear of any discipline entries. Claimant's pay rate was \$42.60 per day. As the result of a clerical error, Claimant was not paid for one day's work during a pay period ending March 13, 1975. The Auditor of Payroll Accounts issued Draft No. 091047 to cover the pay shortage. That draft is the basis of this dispute.

The Carrier alleged that the draft was issued in the amount of \$42.00 and that Claimant altered and cashed it for \$42.60. By letter dated April 21, 1975 Carrier notified Claimant to attend an investigation to develop facts and determine responsibility for altering the amount shown on the draft. The Board of Inquiry found the Claimant guilty of the alleged alteration and assessed a ten (10) day suspension. A claim was filed and attempts at resolving the dispute on the property were unsuccessful.

The dispute is really a question of proof and this Board finds that the Carrier has failed to carry its burden of showing that Konow altered the draft. Carrier's Exhibit #2, a copy of a time card identified as B&O-C&O Form P-157-C, Desk No. 622, Ident. No. 2614771, records a draft to Konow. The amount of that draft is unclear: it could be either \$42.00 or \$42.60.

Carrier's Exhibit #3 is a copy of the cancelled draft. The amount payable on the draft is without question \$42.60, but the "6" appears as if it may have been originally drafted as a "0" and changed. No other physical evidence was produced. Thus, the Carrier has shown nothing more than: (1) the Auditor of Payroll Accounting reported the draft as supposedly being issued in the amount of \$42.00; and (2) the draft may or may not have been altered. The quantum of evidence produced is unimpressive and does not support a charge that Claimant altered Draft No. 091047.

This Board accordingly holds that Claimant's record shall be cleared of the ten (10) day suspension and he be made whole for any lost earnings.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claimant's personal record shall be cleared of the ten (10) day suspension and he shall be paid for any lost earnings as provided in Rule 27 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.

