

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Carter, Referee

Award Number 24414
Docket Number MS-24687

PARTIES TO DISPUTE: { Reynaldo A. Gonzalez
{ Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on April 29, 1982 covering an unadjusted dispute between me and Consolidated Rail Corporation (CONRAIL) involving the question:

My unjust and discriminatory "Dismissal in all capacities from Consolidated Rail Corporation."

OPINION OF BOARD: Claimant (Petitioner) was formerly employed by Carrier as a Ticket Seller (Amtrak) at Grand Central Station, New York, New York. As a result of an internal audit conducted by Amtrak, Claimant was notified by letter dated June 20, 1981, that he was held out of service. On the same date he was notified to report for formal investigation to be held at 1:30 P.M., June 26, 1981, in accordance with the provisions of the applicable collective bargaining agreement, on the charge:

"Falsely claiming monetary credits on your RT01 Summary Log and on Form N. R. P. C. 920 line 44, and your failure to remit revenue from your sale of tickets listed RT01 on Form N.R.P.C. 920 line 44 as follows:

<u>DATE</u>	<u>TICKET NO.</u>	<u>VALUE OF TICKET</u>	<u>AMOUNT NOT REMITTED</u>
4-4-81	445626	23.25	23.25
4-4-81	457354	12.75	12.75
4-4-81	487179	14.75	14.75
4-4-81	622379	12.75	12.75
4-25-81	452831	17.50	17.50
4-25-81	508599	39.00	39.00
		120.00 total	120.00 total"

By agreement, the investigation was postponed until July 3, 1981, at which time it was conducted, with the Claimant present and represented by a representative of the collective bargaining organization. Claimant and his representative actively participated in the investigation by questioning witnesses presented by the Carrier and Claimant making a statement in his behalf. Following the investigation, Claimant was notified that he had been assessed discipline of "Dismissal in all capacities from Consolidated Rail Corp." Appeal of the discipline assessed was made by the duly authorized representative of the collective bargaining Organization, in accordance with the provisions of the applicable Agreement and the Railway Labor Act, up to and including the highest designated officer of the Carrier to handle such disputes, the Senior Director-Labor Relations, who denied the appeal on November 12, 1981.

The Carrier contends that the Petitioner's Statement of Claim is not capable of being judicially heard and determined by this Board under the provisions of the Railway Labor Act. We agree with the Carrier so far as any alleged "discriminatory" action is concerned. Any alleged discrimination must be addressed to a forum other than this Board. Also, any dispute that claimant may have with the collective bargaining Organization is outside the jurisdiction of this Board. However, the Board does have jurisdiction over an alleged unjust dismissal, which we consider as a grievance under the Railway Labor Act.

A copy of the transcript of the investigation conducted on July 3, 1981, has been made a part of the record. We have reviewed the transcript and find that none of Claimant's substantive procedural rights was violated. The charge was made against Claimant well within thirty days of knowledge of the internal audit made by Amtrak, which met the requirements of Rule 42(b) of the collective bargaining agreement. The inclusion of Claimant's prior record in the investigation was not in violation of the Agreement or prejudicial to Claimant.

The transcript of the investigation is lengthy. Without attempting to detail the evidence, suffice it to say there was substantial and credible evidence produced in the investigation to establish Claimant's responsibility for the charge against him. The senior internal auditor of Amtrak testified at length in the investigation, which testimony was backed up by documentation. The evidence showed that Claimant had taken credit, through the computer, for the tickets listed in the letter of charge, as being invalid. Later the tickets were picked up as revenue on the trains on which used, but Claimant did not remit the revenue that he had collected for the sale of the tickets, although the records indicated the tickets were sold by him.

Claimant, throughout the investigation, maintained that malfunctions of the computer, and not his own actions were at fault. There was no evidence of malfunctioning of the computer on the dates in question, or in connection with the tickets involved.

Upon consideration of the record before the Board, and the nature of the offense involved, we do not consider Carrier's actions in dismissing Claimant from service as unjust, arbitrary, capricious, or in bad faith.

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 to the extent indicated in the Opinion;

That the Agreement was not violated.

A W A R D

Claim of unjust dismissal is denied.

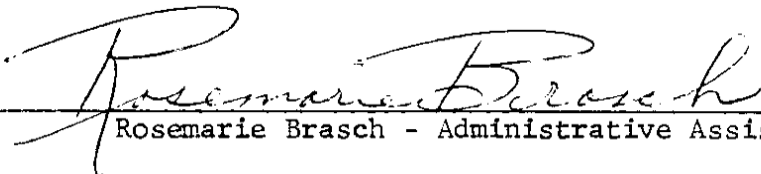
The contention as to alleged discrimination is dismissed.

The contention as to Petition not being properly represented by his union is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.