

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25426
Docket Number SG-25482

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on Consolidated Rail Corporation:

That Signal Maintainer H. Bjorkman be restored to service to the Carrier with all rights and benefits unimpaired and be compensated for all lost wages from the date of his suspension and subsequent dismissal.

[Carrier file No. SD-2052-D]

OPINION OF BOARD: After an investigation conducted on March 23, 1983, for the stated purpose of determining their responsibility, if any, for the alleged taking of the pay draft of M. A. Beauvais on December 9, 1982, Signal Maintainer H. Bjorkman and Signal Maintainer J. Brodeur were dismissed from the Carrier's service.

The charges resulted from an investigation conducted by Carrier's Police Department after a missing paycheck had been reported to it. At the hearing two Officers testified as did Brodeur and Bjorkman. There were no other witnesses. Except to the extent noted herein the facts of the two cases are identical and both will be considered in this Opinion.

The substance of the testimony of the two Claimants is that the method of obtaining their pay was for employes to take their own checks from an alphabetical file located on the Carrier's premises. On December 9 Brodeur and Bjorkman were together and Bjorkman picked up their checks along with that of employe LaRochelle. He signed for all three. The two then went to the Irish House, a bar, to cash the checks. Bjorkman endorsed his check and that of LaRochelle and then went to call his wife. She told him employe Beauvais had called claiming Bjorkman had his check. At the hearing Bjorkman denied knowing he had taken Beauvais' check. He also denied having endorsed it, but stated they (i.e., Bjorkman and Brodeur) knew Beauvais' check had been cashed because they had four piles of money on the bar. Brodeur on the other hand testified "We rode down to the Irish House and had our checks, LaRochelle's check and we noticed we had Mr. Beauvais'." (Emphasis supplied) He denied endorsing it but stated they knew it had been cashed "Because the 4th check was

sitting on the side, we were in their (sic) shooting the bull, and we looked over and saw it had been cashed without either one of use (sic) signing it"

The three later met at the Irish House. Brodeur gave Beauvais some money, he wasn't sure how much, and Bjorkman "started counting where Jimmy left off".

Over the Organization's Objection written statements from Beauvais, employe Harrison and the Irish House bartender which had been obtained by a Carrier's Police Officer were admitted. In a statement dated March 21, 1983, Beauvais announced he had "dropped the charges" against Claimants.

The Organization argues strenuously that no weight can be given to statements made to the Carrier's Police by persons who did not testify at the hearing. However this Board believes the testimony of Claimants, noted above was sufficient for the Carrier to conclude there was substantial probative evidence to support the charges. Therefore we are unable to disturb the Carrier's findings. We note in particular the fact that each Claimant had to give Beauvais money to reimburse him for the total amount of the check.

We do not agree with the Organization's position that failure of local authorities to prosecute and Beauvais' withdrawal of his complaint require a finding on behalf of Claimants. The focus of our inquiry is and must be on the issue of whether disciplinary action is proper under the terms of the applicable Agreement. This is a different question from that posed in criminal proceedings and it is settled that the one is not dependent upon the other.

In this Board's opinion there was substantial evidence to support the finding that Claimants were guilty of the serious matter of the taking of a fellow employe's pay draft.

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 Employes involved in this dispute are respectively Carrier and Employes 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

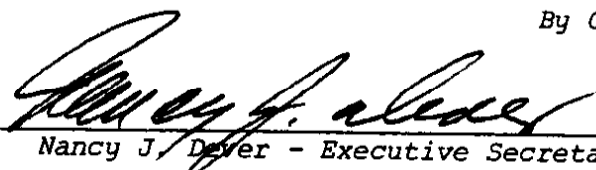
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.