

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25861
Docket Number SG-25832

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad (former Louisville & Nashville Railroad):

On behalf of Leading Signalman A. Y. Fuller who was assessed five days' suspension for making unauthorized telephone charges on his lodging bill on January 5, 1983."

OPINION OF BOARD: Claimant Fuller, a Lead Signalman was assigned to a gang which was lodged at a Holiday Inn on January 3 and 4, 1983. When the Carrier, which pays for rooms and reimburses employees for meals and other expenses received the motel bill it showed a charge of \$1.40 for phone calls. The invoice was prepared the day after the gang checked out. On January 17, 1983, Claimant was "charged in connection with making unauthorized charges for telephone calls on lodging bill dated January 5, 1983. . . ." In response to an inquiry the motel advised that as of January 17 the \$1.40 charge had not been paid. At the investigation Claimant admitted the calls were personal calls. He contends Foreman Roach signed him out of the motel and that he had not seen the bill. Supervisor of Signals Powell testified it is not unusual for employees to make calls from their rooms but they are expected to pay for them. He further testified it is not necessary for employees to arrange for separate billing for phone calls and that it was practical for employees to wait until checking out to pay such charges.

Claimant contends it is unusual for Foreman Roach to sign gang member's bills. Although Powell testified it was not unusual, when Claimant questioned him further and asked if he could produce other receipts signed by Roach the investigating officer would not allow the inquiry.

Claimant testified he had stayed at this motel in the past and normally pays phone charges upon checking out. He stated often the charges are not accurate. He testified he did ask the clerk on January 5, what his phone charges were and was told the records were locked in a safe. He asserts he did not know the amount due until receipt of the Notice of Investigation.

On February 11, 1983, Claimant was advised by letter that:

"Evidence developed at this investigation supported the charge that you did, in fact, cause these charges to be billed against the company when they are your responsibility.

I recognize that you made a very small effort to pay for these calls. However, the weak attempt that you made does not relieve you of your responsibility to pay for these charges."

Claimant was suspended for five days.

Carrier argues Claimant clearly made unauthorized phone calls and allowed them to be billed to the railroad company. It describes this as a "fraudulent act." Carrier cites cases describing unauthorized use of the telephone as dishonesty and fraud justifying discipline, including discharge. This Board does not believe the principles underlying those cases apply here as they were cases of surreptitious use of the phone. Here investigation established the normal procedure was to settle phone charges upon checking out. Claimant did not check out -- Foreman Roach checked him out. There is no evidence that Roach, who did not testify, ever informed Claimant of the charges.

We do not agree the investigating officer's refusal to allow Claimant to pursue the question of whether it was unusual for Roach to check employees out deprived Claimant of a fair and impartial hearing as he contends. We do note that no evidence was introduced to rebut Claimant's testimony, based on a year's experience on the gang, that the practice is otherwise.

Admittedly Claimant incurred the charges. It is not the fact of incurring them to which Carrier objects as it concedes employees are allowed to make phone calls. It is the fact of allowing them to be billed to the railroad company that is an issue here. As the normal check out procedure was apparently not used here, and as it is during the check out procedure that these bills are generally handled, we do not believe Carrier's finding of responsibility is based upon substantial evidence that the problem was of Claimant's making.

FINDINGS: *The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:*

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

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.