

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

(Reginald C. Allen
PARTIES TO DISPUTE: (
(New Jersey Transit Railroad, Inc.

STATEMENT OF CLAIM:

"As noted in my previous letter, on May 16, 1985 I was arrested, suspended and subsequently fired never working for N.J.T.R.O. since the above date for alleged theft of company funds. After having been exonerated of all charges in Essex County Superior Court in Newark, N. J., B.R.A.C. officials and N.J.T.R.O. officials simply stated my case is closed.

Therefore, I am claiming full projected wages from May 16, 1985 until the day I am fully reinstated with N.J.T.R.O.

As well as, full seniority rights and status held before my wrongful dismissal."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a Clerk-Cashier. On May 9 and 10, 1985, he was assigned to the Newark Receiver's Office. Claimant's duties on those days included receiving the daily cash fares from the trainmen and preparing same for deposit with the Midlantic Bank.

On May 13 and 14, 1985, Midlantic Bank Accounting Department personnel discovered shortages in the deposits prepared by Claimant on May 9 and 10, 1985, totaling \$3080.00. On May 16, 1985, the Carrier conducted an audit of all revenue reports submitted by train crews on the relevant dates. The audit showed that Claimant had accurately reported the total sums received from the trainmen on deposit slips. This finding eliminated the possibility

that a mistake had been made while the sums were being recorded, but it increased the possibility that an amount, dramatically less than that received and recorded, had been placed in the sealed bags which were delivered to Midlantic Bank.

On May 16, 1985, the Carrier relieved Claimant of his duties, pending the result of an investigation, pursuant to Rule 44 of the Agreement. Carrier convened an investigative hearing on June 4, 1985. The Organization requested a recess on behalf of Claimant who was in attendance until the results were available from a civil prosecution entered into against Claimant for the same alleged offense. The recess was granted.

On November 12, 1985, Carrier sent Claimant a notice, by certified mail, informing him that the investigation would reconvene on November 20, 1985. The notice was sent to Claimant's address of record, which was also the address where Carrier had successfully sent previous notices, but was returned by the Postal Service bearing the notation, "Moved, Left No Address." Claimant did not appear at the reconvened investigation. The Local Chairman who appeared at the hearing to represent Claimant stated that he had not been in contact with Claimant and did not know why he was not present.

As a result of the investigation Carrier dismissed Claimant on December 3, 1985, "from all service for violation of being dishonest and of failing to properly perform (his) duties as Clerk-Cashier...in connection with failing to remit \$3080.00 in revenues which was missing from sealed money bags...."

A review of the record clearly demonstrates that Carrier met its obligations in attempting to notify Claimant of the November 20, 1985, investigation. Therefore, Claimant's contention in this regard is without merit.

It is well-established in this industry that the Carrier's burden in discipline cases is to support its findings by way of substantial evidence as opposed to evidence beyond a reasonable doubt or some other similar standard. Moreover, as this Board has repeatedly stated our role in discipline cases is not to substitute our judgment for that of the Carrier's but to determine whether there is in fact substantial evidence to sustain the Carrier's findings of guilt. Third Division Awards 5032, 13179, and 16168.

A review of the record shows that the Carrier determined that the \$3080.00 deficiency occurred when the money was under Claimant's control, that is, after he received the cash fares collected by trainmen and correctly recorded the amounts, and before he placed and sealed the money in canvas bags for delivery to the bank. Thus, the Carrier instituted disciplinary action against Claimant. The Board finds that Carrier's determination is supported by substantial evidence contained in the record.

Claimant has presented other alleged facts and arguments for the Board's consideration. However, these matters were not raised on the property and they may not now be presented for the first time at this appellate level. Third Division Award 13179.

The final question before the Board involves whether the degree of discipline that Carrier assessed, i.e., the supreme penalty of discharge, was appropriate under the circumstances as presented. The standard the Board must follow in deciding this issue is, again, well-established in this industry. The Board cannot disturb a disciplinary determination based on substantial evidence unless it is apparent that the judgment of the Carrier was arbitrary or capricious. Third Division Awards 5032 and 16168.

Here the offense in question involved dishonesty and dereliction of duty which resulted in monetary loss. The facts strongly indicate serious and major wrongdoing. The Carrier is obligated to take appropriate precautions to ensure that that money is in safe-keeping while in the hands of its employees. Therefore, the Board concludes that once the Carrier determined by substantial evidence that Claimant was guilty of this offense it had every right to dismiss him from service.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.