

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38079
Docket No. CL-39107
07-3-05-3-562

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization that:

1. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when, by notice of February 6, 2004, it assessed discipline of “Letter of Reprimand and full restitution of outstanding funds” against Claimant, pursuant to an investigation held on January 28, 2004.
2. The Carrier shall be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned, including but not limited to daily wages, holiday pay and overtime had discipline not been assessed.
3. The Carrier shall now expunge the charges and discipline from Claimant’s record.
4. Carrier shall now reimburse Claimant for any amounts paid him for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On December 19, 2003, Carrier directed Claimant to attend a formal investigation on December 29, 2003. The Notice charged Claimant with violating Amtrak's Standards of Excellence - Attending to Duties and Amtrak's Security and Loss Prevention Policy, Section 5. The Notice specified that on November 6, 2003, Claimant allegedly failed to secure Amtrak's Emeryville Station deposit in the amount of \$2,258.20, which was subsequently removed and never recovered. Following two postponements, the hearing was held on January 28, 2004. On February 6, 2004, the Hearing Officer issued his decision finding Claimant guilty of the charges and Carrier assessed Claimant a formal letter of reprimand and full restitution of the \$2,258.20 by weekly payroll deduction for 30 weeks.

The critical issue is whether Carrier proved the charges by substantial evidence. The record reflects that at the time of the incident, although the Emereyville facility had a safe, only the morning station agent had access to the safe. His shift ended at 1:45 p.m. Loomis, the armored car service that Carrier used, did not arrive to pick up the bank deposits until after the morning agent's shift ended. The morning agent gave the deposits to Claimant. Because Claimant did not have access to the safe, the only place where she could secure the deposits was in the cash drawer, a cash drawer used by all ticket agents at the facility. Claimant's shift ended at 2:30, but she began balancing around 2:00. The evening agent's shift did not begin until 2:30. Another ticket clerk was scheduled to work until 3:00 p.m. but the morning agent gave the deposits to Claimant rather than the clerk who worked later.

On November 3, 2003, Loomis arrived after Claimant had gone home for the day. The evening agent was unable to locate the deposits. Apparently, the deposits were never found.

The Organization contends that Claimant followed her standard procedure when she locked the deposits in the cash drawer. In the Organization's view, Carrier had no procedures in place to safeguard the deposits and, on November 3, 2003, Claimant did what she did every day. The Organization observes that following this incident, Carrier installed a drop safe at the facility. In the Organization's view, Claimant cannot be held responsible for the loss.

Carrier contends that Claimant was in charge of the deposits and she left the money unprotected when her shift ended. Carrier urges that Claimant "did not call anybody and tell them that Loomis had not picked up the deposit; she simply left the station when her tour of duty was over at 2:00 p.m. She should have notified someone in authority that she was due to get off and that the money would be unprotected for a period of time. She more than likely would have been told to stay and protect the money until someone arrived to relieve her. The fact is that Claimant received the discipline because she left the money unprotected. Claimant is not a new employee. She has over twenty (20) years service in station operations and she should have known better than to leave the monies un-protected."

We have combed the record meticulously and have been unable to find any evidence supporting Carrier's theory of Claimant's culpability. The record is clear that, because no one had access to the safe after the morning agent left, the only place where the deposit could be secured was the cash drawer, which is where Claimant left the funds.

On cross-examination by Charging Officer Hanrahan, Claimant testified as follows:

"Hanrahan: Okay. And did -- every -- so every day of the week, you would -- the lead day person would hand you the remit and you'd hang onto it and then give it to the night agent basically on a daily basis?

Reed: Pretty much so, yes.

Hanrahan: Okay. So it was a standard routine.
 Oakly. No further questions. Thanks.”

The Hearing Officer then followed up:

“HO: Okay, so on this date, you do acknowledge that
 you were given the remit?

Reed: Yes, I do.

HO: And then you put it in this drawer and locked it
 up and then went and did your accounting?”

Reed: Yes.

HO: Okay. So you were the responsible person for the
 money at that point?

Reed: Up until the time I closed up, yes.”

No one asked the Claimant what she did on November 6, 2003, when she left for the day. No one asked the Claimant if the night agent, whose shift started at 2:30, the same time as the Claimant’s shift ended, had arrived before the Claimant departed. No one asked the Claimant if she had any conversation with the night agent or anyone else about the deposit before she left for the day. The night agent was not called as a witness. The Claimant did testify that her routine was to hand the deposit over to the night agent if Loomis had not yet arrived as of the end of her shift, but no one asked her if that is what she did on November 6, 2003.

The record contains no evidence of a specific procedure at the Emeryville facility that the Claimant was expected to follow and that she failed to follow. On the very sparse record before us, we are unable to find that the Carrier proved the Claimant’s culpability by substantial evidence.

In its Statement of Claim, the Organization requests the Claimant’s reinstatement, back pay and compensation for lost health and welfare benefits. We do not understand this request for relief. The Claimant received a reprimand and restitution via payroll deduction. She was not discharged or suspended.

Accordingly, the appropriate remedy is to order the Carrier to rescind the reprimand, remove it from the Claimant's file and reimburse her for any monies withheld from her pay as restitution for the loss.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of February 2007.