

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44771  
Docket No. CL-45900  
22-3-NRAB-00003-200058**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(Transportation Communication Union/IAM  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

- “1. Carrier violated the Agreement when it improperly dismissed Claimant (Jamal Persad) from employment as a result of formal investigation opened March 12, 2018, and concluded on October 15, 2018; and**
- 2. Claimant shall now be reinstated to service, compensated for all lost wages, overtime and holiday pay, including any other compensation Claimant may have earned during the time Claimant is held out of service; Claimant’s record will be cleared of the charges made in this matter, and all rights, privileges and seniority shall be restored unimpaired; and**
- 3. Claimant shall now be reimbursed for any amounts paid by Claimant for medical, surgical or dental expenses for Claimant and Claimant’s dependents to the extent that such payments would be payable by the current insurance carriers covering Claimant’s fellow employees in the craft; Claimant shall also be reimbursed for all premium payments Claimant may have had to make in the purchase of substitute health, dental and life insurance; this and the above claims shall be considered as ongoing and therefore shall continue until such time as this dispute is settled.”**

**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.

The Claimant began his service with the Carrier on October 13, 2014. At the time this dispute arose, the Claimant held the position of Extra Board Cashier assigned to the overnight shift at the Amtrak Ticket Receivers Office in New York, New York. His duties included receiving cash and credit card reports from conductors, and dining and café car stewards.

On November 15, 2016, the Claimant worked the 10:00 PM-6:00 AM shift. The Claimant collected \$3,183.49 in cash remittance from conductors and on-board staff. At the end of his shift, the Claimant reported turning in \$3,183 on his cash remittance slip as well as in Amtrak's ASAP accounting system. During an audit, a \$100 shortage was found in the "bank drawers". An investigation determined that the Claimant incurred the \$100 shortage in his remittances and diverted cash from the station's working funds to his remittance deposit. The alleged theft was reported to the Carrier's Police Department and on December 8, 2016, the Claimant was arraigned on charges of theft.

On December 9, 2016, the Claimant was given notice of an investigation in connection with the following charges:

- 1) Alleged violation of Amtrak's Standards of Excellence, specifically the part entitled "Attending to Duties" which states in part:

*Amtrak's success depends on using all available resources in the most effective and productive way possible. As an Amtrak employee and, therefore the company's most important resource, you have an obligation to perform your duties properly and in accordance set forth for your particular job. This requires that you remain alert to your duties at all times. Any activity or behavior that distracts or prevents you or others from attending to duties is*

*unacceptable.*

- 2) Alleged violation of Amtrak's Standards of Excellence, specifically the part entitled "Personal and Professional Conduct" paragraph related to Teamwork which states in part:

*Being polite to each other is one of the basics of teamwork, so it is important that we are all considerate and respectful of each other. Part of teamwork is properly performing your duties. Another part is following instructions. Therefore, you must comply with all company and departmental policies, procedures and rules as well as all instructions, directions and orders from supervisors and managers.*

- 3) Your alleged violation Amtrak's Standards of Excellence: "Trust and Honesty", which reads in part:

*"Every productive relationship requires that the employee and his/her employer trust one another. .... so it is at Amtrak .... we have a responsibility to use for and account for Amtrak funds, property and services ...with care and economy and to protect them from abuse .... Amtrak has no tolerance for employees who are dishonest."*

**Specification:**

It is alleged while working the 10:00 PM-6:00 AM on 11/15/16 in the ticket receiver's office as a cashier that you took company funds totaling \$100.00.

After a formal investigation on March 12, 2018; August 7, 2018; and October 15, 2018, the Hearing Officer found the Claimant guilty of all charges and the Claimant was thereafter dismissed from the Carrier's service.

In a letter dated November 5, 2018, the Organization appealed the Carrier's discipline. The Carrier denied the appeal in a letter dated January 21, 2018. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that it has produced substantial evidence of the Claimant's violations. The initial shortage was discovered by two cashiers and recounted in front of the office lead. The cashiers found that several of the single \$100 packs were short by \$10. The lead reviewed security camera video to observe the Claimant's handling of the cash and observed him removing multiple \$100 packs of one-dollar bills from the view of the cameras for several minutes. When the Claimant returned to the view of the camera, he was seen retaping the wrappers on the packs of one-dollar bills. There is no dispute that the shortage of \$100 occurred during the Claimant's tour of duty.

The Carrier contends that during the formal investigation, the Claimant denied taking the \$100, but did not deny the bank shortage and could not supply an explanation for the missing funds. The Claimant was evasive when questioned and relied on coaching from his representative. The Carrier contends that there is no dispute that the Claimant was responsible for the balances of his remittance as well as maintaining the station working fund during his shift. Neither the Organization nor the Claimant disputed what was described in the surveillance video or explained what the Claimant was doing.

The Carrier contends that it is the responsibility of the Hearing Officer to weigh the evidence and determine the credibility of the witnesses. The Carrier contends that those findings should not be disturbed so long as they are based on the record.

The Carrier contends that the Claimant was properly withheld from service, was given proper notice of the charges, and held the hearing within the time limits. Thus, the Carrier contends, the Claimant was provided a fair and impartial Investigation. Furthermore, the Carrier contends, the Organization failed to raise any of these issues during the on-property Investigation, thereby waiving any objections on these points. The Claimant's formal investigation was postponed until the completion of the criminal proceedings, which occurred on January 17, 2018, when the charges were dismissed.

The Carrier contends that an act of dishonesty is a serious offense which permanently severs the employer-employee bonds of trust. Many Third Division boards have confirmed that dishonesty is a standalone dismissible offense. While the Claimant had no prior discipline, he had only been employed by the Carrier for two years at the time of the incident.

The Organization contends that while the Organization agreed to the first postponement, there was no agreement to an indefinite postponement during the

pendency of the criminal proceedings. The Carrier opened the investigation on March 12, 2018, after the criminal charges against the Claimant were dismissed. The Organization contends that the Investigation was not timely, pursuant to Article VI-Work Rules 1 Discipline, paragraph (d), which states:

If an employee has been withheld from service, an investigation shall be held within ten (10) calendar days of the date of his removal from service (subject to one postponement not to exceed twenty (20) days at the request of either party, with further postponements remaining subject to agreement). An employee and his representative shall be given written notice in advance of the investigation, such notice to set forth specific charge(s) against him.

The Organization contends that the Carrier has failed to show that its removal of the Claimant prior to the formal investigation was proper. The Organization contends that the Carrier's decision was arbitrary, capricious, and violated the Claimant's right to a fair and impartial investigation. If the Carrier had not removed the Claimant from service, it would have been required to hold a Notice of Intent to Impose Discipline meeting, where it would have been required to provide discovery to the Claimant and his representatives. The Organization contends that these procedural errors are fatal to the Carrier's case.

The Organization contends that the Carrier has failed to provide substantial evidence of the Claimant's alleged violation. First, the Organization contends that the Carrier charged the Claimant with taking company funds, or theft, but the Carrier did not prove theft. At the investigation, the Carrier's case focused on violation of the Over and Short Policy, which was never mentioned in the charges. The Claimant expressly denied taking the Carrier's funds. Second, the Carrier relied on hearsay testimony, rather than direct evidence. The Organization points out that the Carrier did not call the cashiers who discovered the shortage or produce the ledger. Third, the Carrier did not include the video in the record, which it alleges shows the Claimant's guilt.

The Organization contends that the Carrier has failed to follow its progressive discipline policy. The Organization contends that the Carrier arbitrarily imposed dismissal, which was excessive for the misconduct at issue.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. After a careful review of the record, we find

that no such objections were made at the time of the hearing, and thus, they are untimely now. Third Division Award 19928.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

Here, the Carrier produced substantial evidence of the Claimant's violations. Although the evidence was circumstantial in nature, the Claimant offered no other plausible explanation for the facts that were presented by the Carrier's witnesses. This Board has held numerous times that circumstantial evidence can satisfy the Carrier's burden of proof. Although the Claimant denied taking the missing funds, no other reason for the shortage and his unusual behavior was offered.

The penalty of dismissal was not excessive considering the seriousness of the misconduct and the Claimant's short tenure with the Carrier at the time of the incident. The penalty has regularly been found to be a just discipline for Dishonesty, such as theft, even for a first offense.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 29<sup>th</sup> day of July 2022.