

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (CR-0601-D)

that:

- a) The Carrier violated the Rules Agreement, as amended by the Interim Rules dated January 26, 1976, particularly Rule E-1 when it assessed discipline of disqualification as Ticket Seller in Grand Central Terminal on Clerk Andrew Carter on July 12, 1978.
- b) Claimant Carter's record be cleared of the charges brought against him on June 30, 1978, and the disqualification as Ticket Seller in Grand Central Terminal be set aside.

OPINION OF BOARD:

The Investigation hearing which resulted in the disqualification as Ticket Seller, appeal from which action is the subject claim, was called and held on the following charges addressed to Claimant:

"Conduct unbecoming an employee on June 1, 1978 while selling tickets at window 19, G.C.T., New York, N.Y. at approximately 6:40 PM at which time and place it is alleged:

- 1) You made obscene gestures to patron Harvey Glenn Berginer.
- 2) You failed to comply with bulletin instructions to identify yourself by name and man number upon request.
(Copies of patron Berginer's complaint and bulletin notice are attached)"

The record discloses that Carrier's actions, in issue in the claim herein, were based on a letter received from an individual who identified himself as a ticket-purchaser who stated that he had been delayed in a line at Claimant's ticket-selling window while, according to this individual, Claimant took an "extraordinary amount" of time for cash transaction, engaged in talk with colleagues and took a "self-imposed break during the busiest time of the day." The letter further states that the customer's attempt to solicit the name of Claimant was met by the latter with an "obscene gesture" (otherwise not described). The letter demanded dismissal of Claimant.

At the outset of the Investigation hearing it was revealed that the sender of the letter would not be present, Claimant's representative objected to continuation of these proceedings and demanded dismissal of the charges. The motion was denied as was repetition thereof made later in the proceedings.

Carrier witness T.E. Cantwell, Manager Personnel, Passenger Terminal Operations, who read the letter into the record (over objection of Claimant's representative), also testified that he had attempted to induce the letter-writer to appear as a witness by calling him on the phone repeatedly; he was unable to get this individual on the phone (or to get him to phone back in spite of repeated messages left for him) but that individual's father told Cantwell that his son would not appear for fear of reprisals.

The Board is fully conscious of the difficulties faced by Carrier in attempting to supply unwilling witnesses in cases of this kind, handicapped as it is by lack of subpoena power. But the absence of the accuser as a witness upon whose charges the whole case rests makes impossible a procedural sine qua non of due process - the right to hear, confront and question an accuser. Without that it cannot be said that a "fair and impartial" hearing has been granted, pursuant to the Railway Act, as well as well-settled, common-law imperatives for fair trial.

For these reasons, we must sustain the claim.

AWARD:

Claim sustained and shall be complied with within thirty (30) days.



LOUIS YAGODA, CHAIRMAN



F.T. LYNCH, ORGANIZATION MEMBER



N.M. BERNER, CARRIER MEMBER

DATED: May 8, 1980