

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

"ORGANIZATION"

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CASE NO. 8

AWARD NO. 4

STATEMENT OF CLAIM

Claim of the Brotherhood (CR-618-D) that:

"(a) The Dismissal of Trackman Clayton P. Cox on December 7, 1983, was arbitrary and capricious and without just and sufficient cause and was in violation of Rule 27 of the current Scheduled Agreement.

(b) Claimant Clayton P. Cox shall be reinstated without loss of seniority, vacation rights and benefits which he enjoyed prior to his dismissal and shall be allowed the remedy of Rule 27, Section 4 of the Scheduled Agreement."

This claim arose when the Carrier discharged Clayton P. Cox, hereinafter the Claimant, for improperly using a Carrier form to obtain a free ride on an Amtrak train. The specific charge, contained in a Notice of Investigation dated October 18, 1983 was as follows:

"To determine your responsibility, if any, in your unauthorized usage of Form 620 'Railroad Request for Employee Transportation', Ticket No. 357789 Ck 5, in that you utilized this form to acquire a one-way ticket from Clearwater, Florida to Rochester, N.Y. via Amtrak at a cost to Conrail of \$223.00 on or about April 17, 1983."

The hearing, originally scheduled for October 25, 1983, was postponed at the Organization's request until November 29, 1983. The Claimant did not appear on November 29. Assistant General Chairman J. Heck, present on behalf of the Organization, therefore requested another postponement. The hearing officer denied the request and the hearing took place in absentia. The Claimant apparently appeared later that day after the hearing record was closed, but the Carrier refused to reopen the record. By letter dated December 7, 1983, the Carrier notified the Claimant that he had been found guilty as charged and disciplined by dismissal.

The above-quoted claim was then filed on behalf of the Claimant. It was processed on the property and denied by the Carrier. This Board heard argument concerning the claim on September 12, 1985. The Organization properly notified the Claimant of the Board hearing but he did not attend.

In April, 1983, the period of the incident giving rise to this claim, the Claimant was a furloughed Carrier trackman. On or about April 17, 1983, he improperly used a Carrier form to acquire a one-way Amtrak ticket from Clearwater, Florida to Rochester, N.Y. The ticket cost the Carrier \$223.00. Upon

being informed that the Claimant may have improperly used the form, the Carrier conducted an investigation. The Claimant gave a statement to an investigator in which he admitted improperly obtaining the ticket.

POSITION OF THE PARTIES

The Carrier contends that the record contains the Claimant's clear admission that he used a Carrier form without permission to fraudulently obtain the Amtrak ticket. He is, therefore, guilty of a serious act of dishonesty which embarrassed the Carrier. The National Railroad Adjustment Board has consistently upheld a carrier's right to dismiss dishonest employees. As the Claimant's due process rights were not violated, the claim should be denied.

The Organization argues that the claim must be sustained, as the Carrier violated Rule 27, Section 1(a) of the Agreement when it failed to give the Claimant a fair and impartial hearing. The Carrier improperly failed to (1) furnish a copy of the Claimant's statement to the Organization; (2) postpone the hearing when the Organization reasonably requested such action; (3) allow the Organization to question witnesses presented by the Carrier; and (4) present all pertinent witnesses at the hearing. In addition, without retreating from these procedural objections, principles of proper discipline indicate that discharge was too harsh a penalty for the offense.

OPINION OF THE BOARD

This Board finds the procedural defenses raised by the Organization to be without merit. The Claimant was afforded a fair hearing. The Notice of Hearing was properly sent by the Carrier to the Claimant's last known address. He apparently received the notice, as he appeared late for the hearing.

This Board in Case No. 6, also issued this day, has noted that the Agreement between the parties and due process require that a hearing be postponed upon request for "valid reasons." While a claimant's legitimate inability to attend a scheduled hearing would normally constitute a valid reason, it does not automatically follow that a claimant's unexplained failure to appear at the hearing provides a valid basis for a postponement. If the Carrier was automatically obligated to grant a postponement, a claimant could continuously frustrate the discipline process by failing to appear. In this case, the Claimant did not contact either the Carrier or Organization to provide a legitimate reason for failing to appear or to request a postponement. The Carrier apparently delayed the start of the hearing to give the Claimant an opportunity to appear. In these circumstances, the Carrier was not obligated to grant the postponement.

This Board also finds that the Carrier did not violate due process by refusing to reopen the hearing. The Claimant missed the opportunity to attend the hearing at his peril. Once a hearing is closed, neither party normally has the right

to have the record reopened for the presentation of additional testimony. There is no evidence in the record that some unforeseen last-minute emergency, such as an accident, prevented the Claimant's appearance. In sum, there were no unique circumstances that justified the extraordinary step of reopening the record.

The record contains substantial, credible evidence to support the Carrier's finding of guilt. Discharge is not normally an arbitrary penalty when, as here, an employee has engaged in a dishonest act. Accordingly, this Board shall deny the claim.

AWARD

This claim is denied.

S. Buehheit 11-5-85
S. BUCHHEIT
Neutral Member

R. O'NEILL
Carrier Member

J. P. Casese 11-6-85
JV P. CASSESE
Organization Member