

PUBLIC LAW BOARD NO. 2570

PARTIES) CONSOLIDATED RAIL CORPORATION
TO)
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Request that discipline by dismissal imposed upon trainman R. E. Gavin as a result of the following charges be rescinded, expunged from his record and he be restored to service with seniority and vacation rights unimpaired and that he be compensated for all time and expenses incurred inclusive of Health and Welfare premiums in connection therewith:

1. Your alleged failure to issue two cash fare receipts for cash fare of \$2.90 each paid to you for transportation between South Amboy, N.J. and Penn Station, N. Y. on Train No. 3630 on April 1, 1980, while you were on duty as Head Brakeman/Ticket Collector at approximately 4:46 p.m.
2. Alleged violation of applicable portion of Section 2,2.2 of the NRPC Notice No. 66 second revision CRC Notice 19, File 330 dated November 1, 1976 issued to Conductors, Assistant Conductors, Ticket Collectors and Passenger Trainmen -- Entire System -- in that you failed to cancel two cash fare receipts in the presence of two passengers at time fare was collected for transportation between South Amboy, N.J. and Penn Station, N.Y. on April 1, 1980, on Train No. 3630 at approximately 4:46 p.m. while you were on duty as Head Brakeman/Ticket Collector.
3. Alleged violation of Rule E, applicable portion of Paragraph One in Conrail Rules for Conducting Transportation (CT-400) in that you failed to devote yourself exclusively to the Company's service while on duty as Head Brakeman/Ticket Collector on April 1, 1980, when you collected two cash fares for \$2.90 each for transportation between South Amboy, N.J. and Penn Station, N.Y. on Train No. 3630 and failed to remit same in your cash report for April 1, 1980.
4. Alleged violation of applicable portion of Rule "E" Paragraph Seven in Consolidated Rail Rules for Conducting Transportation (CT-400) in that you willfully disregarded the Company's interest when you collected two cash fares for \$2.90 each for transportation between South Amboy, N.J. and Penn Station, N.Y. while you were on duty as Head Brakeman/Ticket Collector on Train No. 3630 on April 1, 1980 at approximately 4:46 p.m.

FINDINGS: This Public Law Board No. 2570 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with failure to issue two cash fare receipts for cash fares of \$2.90 each paid to him for transportation between South Amboy, N.J. and Penn Station, N.Y. on April 1, 1980.

It is unnecessary in this case to go into all of the details except to state that the evidence indicates the claimant did collect two cash fares and failed to make receipts for them and likewise failed to remit the \$5.80 to the Carrier.

This is a very serious offense, and the only reason that discharge is not justified is that there may possibly have been a mistake made, although such is doubtful since the claimant had 15 years of service. However, because of the claimant's 15 years of service, and for that reason alone, the claimant will be reinstated by the Board.

The Board does note that the claimant was notified that his case would be heard by this Board at 10:00 a.m. on January 22, 1982. His case was heard, and the Board was advised at 11:05 a.m. on that date that the claimant appeared and wished to be heard. In the opinion of the referee, the claimant had every opportunity to attend the hearing but failed to appear on time.

It is further this referee's opinion that the employees are not entitled as a matter of right to be present when their case is being heard. The Board recognizes that in the case of Cole vs the Erie Lackawanna, the Circuit Court held that it was a personal matter with the employee, and he had a right to be present. Other decisions have held to the contrary. It has been the experience of this referee that normally if the employee testifies at the Board hearing, his testimony is damaging to his case.

The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

Preston J. Moore
Preston J. Moore, Chairman

A. Bryant - Dissent
Organization Member

W. D. Ch... - Dissenting as
Carrier Member

April 21, 1982

to reinstatement.
Concur that employee has no right to attend Bd. Hearing.