

SPECIAL BOARD OF ADJUSTMENT NO. 259

THE ORDER OF RAILROAD TELEGRAPHERS)

vs)

NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT)
(except Boston and Albany Division) and NEW)
YORK DISTRICT)

STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (Buffalo and East) that:

1. Carrier violated Article 32 of the Telegraphers' Agreement when it required Mr. H. J. Finke, Agent at Fleetwood, New York, to restore a burglary loss of \$227.00 without being accorded a fair and impartial hearing.
2. Carrier shall now reimburse Mr. Finke in the amount of \$227.00, with interest at the rate of 6% beginning September 28, 1956, plus any lost time and other expenses incurred as a result of the incident.

OPINION OF BOARD:

In the afternoon of August 3, 1956 Claimant Finke advised Carrier by telephone that approximately \$227.00 was missing from the cash drawer in his office at the Fleetwood, New York passenger station, this loss having been discovered shortly after the Claimant's return from a brief visit to the men's lavatory. Pursuant to Carrier's instructions, Claimant notified the local police and also Carrier's police. Investigation by police officers failed to disclose any evidence of forcible entry into the station office. Thereafter Carrier requested Claimant to make restitution for the amount of money stolen by the unknown person. After Claimant failed to make restitution in spite of Carrier's repeated requests, Management advised in writing that unless Claimant made good the loss, steps would be taken to obtain restitution through the bonding company, "which may result in your being disqualified from Station Service."

Shortly thereafter, Claimant Finke paid the Carrier the amount of the loss. He then submitted a statement alleging that he had been unjustly treated by being compelled to pay this amount. He also requested a hearing under Article 32(d) of the Agreement. Said hearing was held, following which Carrier issued a decision that Claimant was not unjustly treated and that the claim for reimbursement was denied.

AWARD NO. 3
Case No. 2

It is apparent that Carrier decided Claimant Finke was responsible for the loss of funds due to his own negligence and failure to comply with Treasury Department Circular No. 29 as amended, and that as a result of this decision it made claim upon him for reimbursement in the amount of the funds lost. Carrier's subsequent reference to the bonding company amounted to saying that unless Claimant paid this sum his job was in serious jeopardy.

Carrier's action was tantamount to making a determination of Claimant's guilt and assessing discipline against him without first holding a fair and impartial hearing as required by Article 32(a) of the Agreement. We can see no difference between demanding that Claimant pay a given amount of money and suspending him for a period which represents loss of wages in the same amount. It is immaterial whether the hearing that was held pursuant to Claimant's request, after he had already reimbursed the Carrier, disclosed that he was negligent in the performance of his duties. A fair and impartial hearing was required before disciplinary action was taken.

In view of what we have said above, it follows that the claim must be sustained with respect to part 1 thereof. Part 2 of the claim also is sustained to the extent of reimbursement in the amount of \$227.00 plus interest as requested. Since the record contains no evidence of any lost time or other expenses incurred as the result of the subject incident, there is no basis for sustaining that phase of the claim.

AWARD:

Claim sustained in accordance with above Opinion.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Chairman

/s/ R. J. Woodman
R. J. Woodman, Employee Member

/s/ Chas. N. Faris
Chas. N. Faris, Carrier Member

New York, New York
December 19, 1958.