

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

"(Carrier's File Nos. TCU-D-3322, TCU-D-3321/Organization's File Nos. 393-CO-036-D, 393-D-CO-037-D)

Claim of the General Committee of the Brotherhood (GL-10516) that:

CLAIM NO. 1:

1. The Carrier violated the provisions of Rule 24(a) of the Agreement when, on February 3, 1990, it removed and held Commissary Worker, Mr. Richard Young, from service pending a disciplinary investigation.
2. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when, by notice of February 20, 1990, it assessed as discipline the termination of Commissary Worker, Mr. Richard Young.
3. The Carrier shall now be immediately required to reinstate Claimant, Mr. Young, to his former position as a Commissary Worker and to compensate him an amount equal to what he could have earned, including but not limited to daily wages, overtime and holiday pay had he not been withheld and subsequently dismissed, as mentioned above.
4. The Carrier shall now be immediately required to clear Claimant's record of the charges made against him in this matter and restore all his rights, privileges and seniority unimpaired.
5. The Carrier shall now also be immediately required to reimburse Claimant for any amounts paid by him for medical, surgical or dental expenses for himself and his dependents to the extent that such payments would be payable by the current insurance carriers covering his fellow employees in the Craft. Claimant shall also be reimbursed for all premium payments he may have to make in the purchase of substitute health, dental and life insurance. This and the above claims shall be considered as on-going and therefore shall continue until such time as this dispute is settled.

CLAIM NO. 2:

1. The Carrier violated the provisions of Rule 24 (a) when, on or about February 3, 1990, it removed and held Commissary Worker, Mr. Allan Turner, from service pending a disciplinary investigation.

2. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when, by notice of February 20, 1990, it assessed as discipline the termination of Commissary Worker, Mr. Allan Turner.

3. The Carrier shall now be immediately required to reinstate Claimant, Mr. Turner, to his former position as a Commissary Worker and to compensate him an amount equal to what he could have earned, including but not limited to daily wages, overtime and holiday pay had he not been withheld and subsequently dismissed, as mentioned above.

4. The Carrier shall now be immediately required to clear Claimant's record of the charges made against him in this matter and restore all his rights, privileges and seniority unimpaired.

5. The Carrier shall now also be immediately required to reimburse Claimant for any amounts paid by him for medical, surgical or dental expenses for himself and his dependents to the extent that such payments would be payable by the current insurance carriers covering his fellow employees in the Craft. Claimant shall also be reimbursed for all premium payments he may have to make in the purchase of substitute health, dental and life insurance. This and the above claims shall be considered as on-going 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 employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

This case involves two Claimants, Mr. Richard Young and Mr. Allan Turner, who, at the time of the incident in question were assigned as driver and bar room clerk (commissary workers) in Carrier's commissary in Chicago. Their hours of work were 10:00 A.M. to 6:00 P.M., and their areas of assignment were the bar room and general dock area. At about Noon on January 23,

1990, Mr. John Caylor, a fellow commissary worker reported to a fourth worker, Mr. Thomas Karva, that he had just seen Claimants put a box on the cart Mr. Karva was to take for loading onto Amtrak's Train No. 5, a cross country train scheduled for departure within a few hours. After he had ascertained that a box of steaks had been added to the supplies on the cart, the remainder of which all had been gathered and recorded the day before, he notified his Supervisor, Mr. Padilla. Mr. Padilla checked to see if the additional steaks were part of the original food inventory or if a new order had been issued to supplement the original one. When he found that neither was the case, he notified Mr. Bob Villa, General Supervisor of the Chicago commissary. Mr. Villa then notified Mr. Thomas P. Guerin, District Manager for Carrier's mid-west commissaries. On the afternoon of February 2, Mr. Guerin, Mr. Villa and Mr. Padilla met with Mr. Caylor to discuss the incident.

At that meeting Mr. Caylor told the Supervisors that on January 23, 1990, he was assigned as a driver, taking out goods to trains and bagging ice. He said that he had seen Claimants enter the freezer area, look around as if checking the area for other people, and then saw Mr. Turner "stand guard" while Mr. Young entered the freezer and returned with a box which Claimants then placed on the cart on its way to Train No. 5.

As a result of Mr. Caylor's testimony, confirmed by the Supervisors' subsequent discovery of the box of steaks, both employees were charged with theft. In substance, the charges are nearly identical, with the sole distinction being that Claimant Turner was charged with standing "lookout" for Claimant Young. By letter of February 5, 1990, Claimants were notified of Investigations to be held on February 13, 1990, and February 14, 1990. Specification of the charges against Claimants read in pertinent part as follows:

"Your alleged violation of Rules A, D, F-3 and K of the National Railroad Passenger Corporation Rules of Conduct, which state: Employees must understand and obey the Rules of Conduct, and assist other employees in obeying these rules. Employees must also promptly report violations of these rules to their supervisor, and will cooperate and give testimony in company investigations of suspected infractions of these rules
....

F-3 Conduct involving dishonesty, immorality, or indecency is prohibited. Employees must conduct themselves on and off the job so as not to subject Amtrak to criticism or loss of good will....

K...

Theft, misappropriation, or use for personal gain of Amtrak funds, property or services...is prohibited
....

SPECIFICATIONS: In that while on duty as a commissary worker on Tuesday, January 23, 1990, you were observed with another commissary employee taking unauthorized, a box of 18 each, 10 ounce steaks with a revenue value of \$255.00. You placed these steaks with the supplies of the diner on Train No. 5...."

Following the disciplinary Investigations, Claimants were notified of their dismissal from Carrier's service. The discipline was appealed and processed to the highest Carrier Officer designated to handle such matters.

The Organization's appeal in this case is both procedural and substantive. First, the Organization argues that Claimants did not receive a fair and impartial Hearing. Second, it insists that the charges against the Claimants were not proven; in particular, Carrier showed no reasonable motivation for the actions of which Claimants were accused.

Based upon the record before us, there is no support for the Organization's position that Claimants did not receive a fair Hearing. As may be seen from the charges they are sufficiently specific to permit Claimants to formulate an informed defense. Further, although the Organization went on the record as proceeding with the Hearings under protest, there is no evidence to suggest that Carrier's Hearing Officer assumed a prejudging or prosecutorial role. On the contrary, a review of the record before the Board indicates that both Claimants were afforded a full and impartial Hearing.

Testimony presented against Claimants, particularly that of Mr. Ceylor is credible and consistent. Ceylor initially informed Karva of the incident not to implicate Claimants, but to save Karva from potential disciplinary action for transporting goods not on his invoice. His actions and testimony were disingenuous and believable. Claimants, on the other hand, failed to present any evidence which justifies their presence in the freezer area on the date in question. Nor have they adequately explained their handling of a case of steaks when their assigned duty was the bar area.

Carrier has shown by an overwhelming preponderance of the evidence that Claimants' illicitly removed the box of steaks and secreted them to facilitate their later removal from the shipment. The circumstantial evidence of Claimants' intent to steal is so incriminating that their illegal motivation may be inferred. The fact that the action was discovered before Claimants could carry their misdeed to its intended conclusion does not mitigate the seriousness of the misdeed.


In light of the above, we see no reason to disturb Carrier's assessment of discipline against either of the Claimants in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.