

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34076
Docket No. CL-35176
00-3-99-3-7**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12237) that:

- 1. Carrier violated the provisions of Rule 19, when on or about November 5, 1997, it held Claimant, Toni Allara, from service pending a disciplinary investigation.**
- 2. Carrier acted in an arbitrary, capricious and unjust manner, in violation of Rule 19 of the Agreement, when by Notice of November 18, 1997, it assessed discipline of “Termination from Service” against Claimant, pursuant to an investigation opened on April 23, 1997, and completed November 13, 1997.**
- 3. Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what she could have earned, including but not limited to daily wages, holiday pay and overtime, had she not been held from service and had discipline not been assessed.**
- 4. Carrier shall now expunge the charges and discipline from Claimant’s record.**
- 5. Carries shall now reimburse Claimant for any amounts paid by her for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier.**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The incident giving rise to this claim occurred on March 11, 1997. On that date, the Claimant, a Service Attendant -- Waiter -- served a Loss Prevention Consultant (LPC) a chicken teriyaki dinner and subsequently collected \$8.50 -- \$7.50 for the meal and \$1.00 as a tip -- without completing a meal check or issuing a receipt. In his trip report, the LPC commented that a meal check (receipt) was requested by him, but not issued for his dinner.

In the dining car, the Lead Service Attendant (LSA) is accountable for meal checks, stock and revenue. Because the Waiter's responsibility is to complete a meal check to reflect the customer's meal selection, and then issue the meal check receipt (it is a two-part form), the LSA's Trip report should have reflected an overage of \$7.50. In other words, if no meal check was issued and the money was collected and placed in the "till," the total for the LSA's shift should have shown more money in the "till" than meals were served. According to the Carrier it did not.

By letter of April 2, 1997, the Claimant was notified to appear for a formal Investigation. In that letter she was charged with violation of the "Standards of Excellence" -- specifically with the theft of \$7.50 on March 11, 1997. The LSA was also charged regarding the same incident. A Hearing was held on April 23, 1997, but only the charge against the LSA was considered at that Hearing. The Claimant had been terminated from service a week before the Hearing, as a result of a separate disciplinary matter, so she did not appear. The Hearing was reconvened on November 13, 1997,

after the Claimant's reinstatement to service, and the Claimant appeared for the reconvened Hearing.

Following the Hearing, by letter of November 18, 1997, the Claimant was notified of her termination from service. The Organization filed a claim protesting the Claimant's discharge on December 4, 1997. In its claim the Organization maintained that the testimony on the record did not support the charges against the Claimant.

The Board read all of the voluminous Hearing record in this case, and reviewed all exhibits attached thereto. The facts adduced at the Hearings do not rise to the level required for reasonable grounds to terminate an employee. It is unrefuted that the stock records indicate that there were eight chicken teriyaki meals loaded on the train in question. It is also unrefuted that all eight meals were accounted for. The Claimant and the Lead Service Attendant testified without contradiction that they consumed a combined total of three chicken teriyaki meals as crew meals. The LSA testified that one meal was "condemned" because it was cooked by mistake. The remaining four meals were left for the next crew. Accordingly, there were no chicken teriyaki meals missing.

The LPC testified that he did not receive a meal check from the Claimant. The Claimant confirmed his statement -- saying that she was too busy to give him one. The Claimant and the LPC agree that he gave the Claimant \$8.50 for a \$7.50 meal. The LPC stated at both Hearings that he did not know what the Claimant did with the money remitted after he gave it to her. Both the Claimant and the LSA testified that she put it into the cash box. The only explanation for this apparent anomaly is that somehow there was an extra chicken teriyaki on board, possibly mislabeled as something else. The possibility of this happening was confirmed by both the Organization and the Carrier witnesses.

Moreover, it is uncontroverted on the record that there was no shortage of funds. In fact, the only witness who suggested that \$7.50 was actually missing was the Charging Officer. His conclusion was based on the premise that the Claimant kept the \$7.50 given her by the LPC for an extra chicken teriyaki meal, which is somehow mysteriously absolutely unaccounted for except by the Claimant's supposed misallocation of the monies tendered by the LPC for that unexplained extra chicken teriyaki meal.

The process by which the Carrier made the leap of logic from knowing that the Claimant failed to give the LPC a meal check to deciding that the Claimant sold a

phantom chicken teriyaki dinner and retained the \$7.50 cash defies credulity. At the very worst, the Claimant may be said to have been negligent in her following of established procedures in failing either to give the LPC a meal check or, at a minimum, filling one out to reflect the sale at issue later on. Such dereliction of duty cannot, by any reasonable standard, be said to rise to the level of a dismissible offense.

The Board finds, therefore, that the Claimant's discipline should be reduced to a two-week suspension without pay. She shall be returned to duty with seniority and all other rights unimpaired as of the date serving of such a suspension would have been completed, and she shall receive backpay, less any outside earnings, for the remainder of her time out of service.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of May, 2000.