

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

PROTECTIVE ORDER OF DINING CAR WAITERS, LOCAL 465
UNION PACIFIC RAILROAD COMPANY

DISPUTE.—

"Petitioner, Protective Order of Dining Car Waiters, Local 465, American Federation of Labor, claims that Waiter Hubert McGhee was dismissed from the service of respondent company without a fair hearing and that he should be reinstated without prejudice and reimbursed for his net wage loss."

STATEMENT OF FACTS.—On April 19, 1936, Hubert McGhee, a member of Local 465 was employed by the Union Pacific Railroad Company, the respondent, as a dining car waiter, and had been continually so employed since the year 1929. That on the said 19th day of April 1936 Waiter McGhee was dismissed from the service of the respondent company. The grounds for his dismissal was misconduct. He had been charged with annoying and unbecoming conduct, particularly with regard to stewardesses and women passengers. These charges were for the most part based on reports of the stewards under whom McGhee served.

POSITION OF EMPLOYEES.—

"It is our contention that a mere cursory inspection of the record will reveal that no sincere effort was made by the respondent company to ascertain the truth or falsity of the reports of the various stewards involved in this dispute. The company apparently felt that it was justified in taking as true the statements made by these stewards concerning the service of Waiter McGhee. Indeed, it went further than that and permitted the stewards to give hearsay evidence against Waiter McGhee, and, without making any further investigation, ordered his dismissal, thereby denying him an opportunity to fairly meet the charges.

"The company's position was clearly stated by M. M. Leshner in the conference on June 9, 1936. He said that dining car stewards are representatives of the company and their statements are, therefore, classed as facts. We do not believe that such a position is fair to the waiters of respondent company. In a sense, waiters are also representatives of the company and certainly it would not be contended that their reports concerning stewards should be regarded as sufficient to warrant their discharge. If such a view were indulged in, it would certainly encourage class antagonisms, arraying one class of railroad employees against another, and would ultimately defeat the very spirit and purpose of the *Railway Labor Act*.

"In view of the foregoing, we respectfully request that Waiter McGhee be restored to the service of respondent company, with full seniority rights, and that he be paid in full for the time he has been out of service because of his summary and unwarranted dismissal by respondent company."

POSITION OF CARRIER.—

"Waiter McGhee was dismissed from the service following investigation of complaints made by several stewardesses and women passengers of annoyances and unbecoming conduct, and general unsatisfactory service.

Transcript of his personal record attached shows numerous instances of transfer and suspension for unsatisfactory service. Many other minor complaints of infractions of the rules are not shown on the personal record.

"At the request of the Dining Car Waiters Local he was accorded a hearing at which he denied the charges against him. Nevertheless, the charges of unsatisfactory service have all been investigated and found to be supported by the stewards, and the charges of annoyance and unbecoming conduct are supported by investigation made with the stewardesses and women passengers who made the complaints. It was necessary to remove McGhee from the service for his own safety."

OPINION OF BOARD.—This matter involves a question of discipline. The situation is that the employer has disciplined an employee by discharging him for misconduct.

The record in this case indicates that there were at least some grounds of complaint against Waiter McGhee. At least one charge is undenied—that of a complaint being made by a patron with regard to neglect in service.

Discipline, of course, should not be arbitrary, capricious, or unsupported by the fact of actual misconduct.

On the other hand, the relationship of waiter and patron is a delicate one and the control thereof by the employer is a matter which should not be interfered with in the absence of clear abuse of discretion. This board should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer.

The case here presents purely a dispute of fact. There appears to be sufficient evidence to support disciplinary action based upon a charge of misconduct and neglect in service. A surly or discourteous attitude on the part of a waiter alone may be considered enough for such disciplinary action, as such misconduct tends to destroy the high character of proper service, which the employer wishes to maintain for the benefit of its patrons.

We cannot state on the basis of the record that the carrier acted unjustifiably and without reason, and therefore we cannot interfere with the disciplinary action taken.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That a careful examination of all the evidence of record discloses no adequate grounds for disturbing the disciplinary action of the management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1937.