

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Frank M. Swacker, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**LOUISVILLE & NASHVILLE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of M. B. Lehmann, Dining Car Steward, for reinstatement and pay for time lost account of being discharged, October 31, 1938, in violation of Rule 10, of the Dining Car Stewards' Agreement."

**EMPLOYEES' STATEMENT OF FACTS:** "Dining Car Steward M. B. Lehmann was discharged October 31, 1938, without an investigation, as provided in Rule 10:

'Rule 10, Discipline.—(a) Stewards will not be disciplined without just cause, but suspension pending investigation shall not be deemed a violation of this rule. When discipline appears necessary, the accused shall be duly apprised in writing, within 10 days after knowledge of the occurrence, the nature of the charge or charges brought against him; and within 10 days after such notification, he will be given an investigation by the Superintendent of Dining Cars, or his representative, at which time all evidence in the case will be submitted. A proper record in the case will be kept, authenticated by both parties, and made the basis for any discipline that may be administered, or an appeal to a higher officer.'

'(b) The accused will be permitted to attend the investigation, hear all the evidence submitted, and be represented by fellow employes of his own selection. Within 5 days after the investigation closes (the investigation is not considered closed until the Superintendent of Dining Cars receives the approval of the General Passenger Agent to the reports submitted), decision will be rendered and the accused advised in writing of the penalty imposed.'

'(c) If the decision is unsatisfactory to the accused, he will have the right to appeal within 30 days to the General Passenger Agent, either personally or through his representative, and failing in a settlement, appeal may thereafter be made to the Director of Personnel. In event the charge or charges are not proved, the accused will be promptly restored to the service with full rights and paid full wages for any time he may have lost as a result of the charge or investigation.'

**POSITION OF EMPLOYES:** "Rule 12. Rates of Pay.—(a) The following rates of pay will apply (the pay increase effective October 1, 1937, is here included):

about 3:30 P. M. and at that time the party answering the phone advised he was out of town.

(Sgd) A. E. Flock,  
Supt. of Dining Cars.

(Sgd) P. A. Wagner,  
Chief Clerk—D. C. Dept.'

"The Board of Inquiry assembled at the appointed place and time, 9:00 A. M., October 27th, and remained in session until 10:30 A. M. No word was received from Mr. Lehmann nor from anyone representing him. Based upon the evidence stated herein, the Board recommended that Mr. Lehmann be dismissed from the service of the Carrier, and such dismissal was consummated on October 31, 1938.

"Mr. C. J. McClain, General Chairman of the Brotherhood of Railroad Trainmen, representing Mr. Lehmann, asked for reinstatement, which request was denied by the Carrier."

**POSITION OF CARRIER:** "Claimant has admitted his guilt, both in conversation with the Superintendent of Dining Cars and in a telegram to him two days before the hearing at New Orleans. However, we have stated the facts fully in order that the Board may see that there is no doubt of this man's guilt, even had it been denied.

"In the conferences regarding this case the General Chairman has not made any contention that Claimant was not guilty of the charges upon which he was dismissed nor that such charges were insufficient to justify the dismissal. This whole proceeding is based upon the contention that Claimant was not afforded an investigation, as required by the agreement. In his letter of January 4, 1939, Mr. McClain stated that 'the Company does not have the right to have employees waive investigation in violation of Rule 10 of the agreement, as was done in this case.' However, the Carrier did not have Mr. Lehmann waive the investigation. The telegram he sent from Hammond, La., was wholly voluntary on his part and entirely unsolicited by any representative of the Carrier. Moreover, the investigation was not waived by the Carrier but was held at the time and place stated in the notice to Mr. Lehmann. That notice was handed to him by Mr. Flock in person, and there is not, nor can there be any contention that it was not received. Mr. Lehmann was fully advised as to when and where the hearing would be held. He made no request for postponement nor has he offered any explanation of his failure to be present, other than the telegram in which he assumed responsibility for the charges made against him. Of course, the Carrier has no way to prevent an employee from admitting responsibility for charges made against him, nor has it the power to coerce his attendance upon a hearing against the employee's will. This man was guilty. He knew he was guilty and has acknowledged his guilt, but attempts to escape the just consequences thereof by contending that the Carrier did not give him a hearing, as required by the agreement. Claimant's conduct, in absenting himself from New Orleans while the hearing was in progress, was not even a clever subterfuge, nor does the contention made for him rise even to the dignity of specious argument. Therefore, this claim should be denied."

There is in existence an agreement between the parties bearing effective dates of August 1, 1936, and October 1, 1937.

**OPINION OF BOARD:** The Board sees no grounds for disturbing the discipline in this case.

**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 Employee 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

No basis is shown to support the petition.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1939.