

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of James Casey, Dining Car Steward, for reinstatement and compensation for all time lost, based on Rule 19, Dining Car Stewards and Cooks' Agreement."

EMPLOYEES' STATEMENT OF FACTS: "James Casey was employed as dining car steward, C. & N. W. Railway, operating Chicago, Illinois to Oakland, California, over C. & N. W. Railway Chicago to Omaha, Nebraska; over Union Pacific Railway Omaha to Ogden, Utah, and over the Southern Pacific Railway Ogden to Oakland California, operating westward on train No. 27 and eastward on train No. 28.

"After Casey's arrival at Chicago on train No. 28 September 20, 1939, he was notified by Superintendent of Dining Cars C. H. Shircliffe, to report to his office for an investigation; Casey reporting to the Superintendent Thursday, September 21, 1939, and on Saturday September 23, 1939, he received notice from Superintendent reading:

'Office of Supt. D. & P. Cars
September 23, 1939.

To James Casey, Jr.
Dining Car Steward

You are hereby notified that after investigation of regarding irregularities in the handling of meal checks on diner 6935, train No. 27, August 31st, September 1st and 2nd, 1939, the following discipline has been applied: **DISMISSED.**

Signature: C. H. Shircliffe
Title: Supt. D. & P. Cars.'

"Casey proclaimed his innocence of being responsible for the charges for which investigated, resulting in Local Chairman conferring with Superintendent contending for reinstatement of Casey and pay for time lost, which was declined, causing the claim to be appealed to me, after which I submitted case to M. E. Pangle, Director of Personnel, C. & N. W. Ry., contending for Casey's reinstatement and pay for time lost; Mr. Pangle replied in letter of November 4, 1939, reading in part as follows:

'We are, however, agreeable to giving Casey another opportunity to demonstrate that he can and will comply with all instructions of the railway company in respect to his duties as a steward and exercise proper supervision of any dining car to which he may be assigned, and accordingly we are agreeable to authorizing his reinstatement, effective Monday, November 6, 1939, provided he can pass such ex-

"In concluding argument the employees' representative refers to rule 19, quoting same, and in connection therewith states 'therefore, under provisions of rule 19 . . . I am asking your Board to sustain our position in having James Casey reinstated and compensated for time lost.' It is assumed the employees have reference to that part of rule 19 reading:

'If final decision is in favor of the man his record will be cleared of the charge and if held out of service or dismissed he will be reinstated and compensated for wage loss, if any, suffered by him. Such compensation will be the amount he would have earned less compensation received in other employment.'

and we say this for the reason the provisions of the rule in respect to investigation, etc., were fully complied with, and at no time has there been any contention on the part of the employees to the contrary.

"As indicated in letter of November 4, 1939, attached hereto as Exhibit 'A,' the employees representative was advised that the railway company was agreeable to giving Casey another opportunity to demonstrate that he could and would comply with all instructions of the railway company in respect to his duties as steward and exercise proper supervision, and the company was agreeable to authorizing his reinstatement effective Monday, November 6, 1939, with the understanding there were no compensatory features involved.

"If this Board, on basis of evidence before it, concludes that Casey was not amenable to discipline as the result of his failure to properly perform his duties as a dining car steward, there would be no justification for authorizing any compensatory features subsequent to November 6, 1939, for the reason that any loss of time subsequent thereto is the result of action on the part of his representative, and not on the part of the railway company. However, we hold that on basis of evidence submitted, Casey was amenable to discipline, and that, in the circumstances, dismissal was not too severe.

"We reiterate that we are still agreeable to giving Casey another opportunity to demonstrate that he can and will comply with all instructions of the railway company in respect to his duties as a steward, and that he will exercise proper supervision of dining car to which he may be assigned, but that there is no justification for request that he be compensated for time lost as a result of disciplinary action taken on the contention that he is entirely absolved of any irregularity in the performance of his duties as a dining car steward while assigned as such to dining car 6935, train 27, departing Chicago August 31, 1939 en route to California."

There is in existence an agreement between the parties bearing effective date of March 1, 1938.

OPINION OF BOARD: The record shows that there has been full compliance with the requirements of Rule 19 of the Agreement. No discipline was imposed until after a fair and impartial investigation had been held, and there was ample evidence in support of the charges to justify disciplinary action on the part of the management. Even if, in view of the satisfactory character of the claimant's prior performance, the discipline imposed were deemed to be unduly severe, the developments subsequent to the dismissal preclude any relief other than that voluntarily offered by the carrier. The carrier's willingness to reinstate the claimant as of November 6, 1939 amounted to a virtual conversion of the penalty of outright dismissal, assessed September 23, 1939, into one of a six-weeks suspension; and the claimant's refusal to avail himself of this offer of reinstatement, upon advice of his representative, relieves the carrier of all responsibility for time lost subsequent to November 6, 1939. Since, furthermore, no basis appears for disturbing the carrier's action in keeping the claimant out of

service between September 23, 1939 and November 6, 1939, the only relief that can be granted is to order that the claimant be reinstated, in conformity with the continuing offer of the carrier, but without compensation for time lost.

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 Employee 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 the evidence of record does not disclose any violation of the Agreement.

AWARD

Claim for reinstatement sustained, on basis of voluntary offer of carrier; claim for compensation for time lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.