

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**  
Bruce Blake, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES**  
**CHESAPEAKE & OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of the Joint Council Dining Car Employees for and in behalf of Thomas H. Latimer for reinstatement as Waiter, and compensation from August 24, 1940, for wrongful discharge for alleged insubordination August 10, 1940."

**OPINION OF BOARD:** This Division of the Board is committed to the rule that it will not interfere with disciplinary measures unless it appears that the Carrier acted in bad faith, arbitrarily, capriciously or upon a fundamentally wrong basis.

It is difficult to determine from the record whether claimant is naturally of a quarrelsome disposition or is merely supersensitive. Whichever view may be taken, however, we think that, in inflicting the severest penalty in its power (discharge), the Carrier acted upon a fundamentally wrong basis in that it failed to accord proper weight to the following facts: (1) that the so-called tirade directed at the Steward by claimant was provoked by the kidding or taunting remark of the former in referring to the latter's name; (2) that the controversy was of a personal nature; and can hardly be said to have arisen "in line of duty." Of course, these considerations do not excuse or justify claimant's conduct. However, they do constitute extenuating circumstances which should have been taken into account in meting out the penalty. We do not think the Carrier gave these considerations the weight to which they were and are entitled—else it would not have imposed the extreme penalty of discharge. Upon the facts disclosed by the record we think it may be fairly said that the Carrier acted capriciously or on a fundamentally wrong basis in discharging claimant. That he was subject to discipline there can be no doubt. But a suspension without pay is as severe a penalty as is warranted by the facts disclosed in this record.

**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 claimant should be reinstated with seniority unimpaired; but without compensation for time lost.

AWARD

Claim sustained as for reinstatement.

Claim denied as for compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1941.