

Award No. 2166

Docket No. DC-2269

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

STATEMENT OF CLAIM: That the carrier, the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, violated its agreement with the organization on April 11, 1942, when (a) without preferring formal charges, it removed Chef Cupid Roy from his regular assignment as chef on the dining cars of the said carrier; and (b) the carrier has refused and continues to refuse to permit Cupid Roy to return to his regular assignment until formal charges will have been preferred against him; and (c) that the carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by an appropriate award and order of the Board to restore Cupid Roy to his schedule assignment as chef, there to remain until charges to which he can make answer will have been preferred against him; and (d) he shall be reimbursed for any money losses suffered by reason of his improper removal from his assignment.

EMPLOYEES' STATEMENT OF FACTS: Cupid Roy entered the service of the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, in August, 1922, as a third cook. He was promoted to a second cook in April, 1925, and was promoted to a chef in December, 1925. Since the last named date, he has been employed by the carrier either in the capacity of a second cook or a chef. On April 11, 1942, the steward in charge of the dining car on which Roy was employed handed him a telegram from the Superintendent of Dining Car Service, Mr. T. T. Turner, advising him (Roy) that he would be relieved by Chef Mose Nicholson; that he would begin service as a second cook in another assignment. Chef Roy turned the telegram over to the General Chairman on the same day that it was received by him. The General Chairman of the organization immediately wrote to the Superintendent of Dining Car Service and asked to be advised why Roy was demoted from chef to second cook.

No definite charges were preferred by the carrier against Roy to which he could make answer under the appropriate rules of the agreement and as late as this date, the Superintendent of Dining Car Service has not made a specific complaint or charge against Roy to which he could make answer.

AUTHORITIES RELIED UPON: There is no rule in the agreement extant between the carrier and this organization that invests authority with the Superintendent of Dining Car Service to arbitrarily remove an employee from his regular assignment without the preferring of charges. The rules

tioner, statements of the stewards regarding the ability of Roy as a chef. These written statements, were furnished the Superintendent Dining Service by the Stewards, at the former's request and as written confirmation of their former verbal statements to the Superintendent Dining Service about the ability of Roy as a chef. Copies of these statements are enclosed.

The fact of the matter is that the petitioner seeks to secure payment of a claim and the re-employment of an incompetent as chef, under the terms of an agreement which was effective after this specific occurrence. The agreement effective May 1, 1942, makes provision for an investigation before being disciplined or dismissed, and without a written request being made therefor. The former agreement did not require this.

The carrier submits that it should not be subjected to claims and disputes predicated on terms and provisions not found in the governing agreement; and that a demand that a hearing should be given an employee (on a matter which the petitioner agreed is subject to the judgment of the Superintendent Dining Service), when the petitioner did not comply with his agreement requirements for obtaining a hearing cannot rightly be sustained.

OPINION OF BOARD: The obligation to request a hearing within the period of time specified in Rule 9 (a), in matters of discipline or unjust treatment, rests with the employee and in this instance was not complied with.

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

That the parties to this dispute waived hearing thereon;

That the carrier and the employees involved in this dispute are respectively carrier and employees 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 employee did not request hearing within the specified time.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of April, 1943.