

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

St. Clair Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

THE ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local No. 351, for and in behalf of Henry Pierce, formerly employed by the Illinois Central Railroad as a Waiter-Coach-Attendant, that he be reinstated with full seniority rights and compensated for all wage loss that he may have incurred as a result of carrier's unjust dismissal.

OPINION OF BOARD: It is asserted that the evidence received at the investigation was insufficient to establish either one of the two charges made against claimant, and hence the carrier must be said to have acted arbitrarily and without just cause in dismissing claimant.

The record reveals that the action of the carrier was predicated upon the more serious of the two charges. Our review is directed toward the sufficiency of the evidence to support the carrier's action under that charge.

The inference of fault on the part of claimant rests on circumstantial evidence. By the sufficiency of that evidence we are to test the propriety of executive action in exercising a very delicate and important discretion. With what degree of certainty must misconduct be established? It must be remembered that appeal here is permitted to protect against bad faith and arbitrary action and not to afford us an opportunity for substituting our judgment for that of the executive. It will be apparent to all practical minds that if we were to here apply the technical rules which govern review of circumstantial evidence in criminal trials, the hands of management would be unreasonably restricted. Reflection suggests that we should not interfere in a case of this character if the circumstances established are such as an ordinarily fair and reasonably minded executive would accept as a basis for like action. We pass to a consideration of the evidence.

The vital question raised by the evidence, is not whether claimant had a right to be in the baggage car where he was found, but whether an innocent or an evil purpose accounted for his presence there. If claimant is to be believed, and his testimony gains some support from other witnesses, that purpose was wholly legitimate. If the witness Bonas is to be believed, a reasonable and fair minded employer could conclude that claimant had locked himself in that car for the purpose of tampering with baggage. A mind convinced of the truth of the Bonas testimony that both doors to the baggage car were bolted from the inside, could not be said to act unreasonably in so concluding. The evidence of Bonas and claimant is in sharp conflict. From a painstaking study of the record, we cannot say that the executives of the carrier acted arbitrarily, capriciously or in bad faith in accepting the version of Bonas. Neither can we say that the carrier was not justified in dismissing claimant if it was convinced that he was attempting to tamper with baggage.

The charge made in the notice of investigation has not failed to receive our consideration. We deem it insufficient. It fails to advise a person of common understanding of the misconduct the carrier proposed to investigate. However, we are not warranted in sustaining the claim based upon this defect. Before the notice was served the hearing officer and claimant talked the matter over and claimant knew the particulars he had in mind. Further, claimant has failed to point out wherein he has been prejudiced as a result of the inadequacy of this notice.

Under principles too well settled to require restatement or citation, the action of the carrier must be upheld.

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 employes involved in this dispute are respectively carrier and employes 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 carrier did not act arbitrarily or in bad faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of February, 1944.

*