

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Local 495; Hotel & Restaurant Employees International Alliance, for and in behalf of Johnnie Staten, Chef Cook formerly in the service of the Atlantic Coast Line Railroad Company, that he be returned to his assignment and compensated to the extent that he has suffered as a result of his being held from service and later dismissed without a formal hearing as prescribed in Article 6 of the current agreement.

OPINION OF BOARD: If we felt at liberty to decide this case on the merits we should have no hesitancy in sustaining the carrier's action in dismissing claimant from its service. But we cannot do so and maintain the integrity of Article VI of the agreement which provides:

"Grievances: No employee should be disciplined without a fair hearing by a designated officer of the company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he is entitled to be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by a counsel of his choosing. If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him."

We need not go beyond the carrier's submission to justify the statement that there was not a semblance of compliance with the provisions of the Article. Claimant was summarily dismissed. The carrier seeks to justify its procedure by the assertion that claimant admitted his guilt and waived a hearing such as is guaranteed by the Article. This, claimant denies under oath.

In some cases involving such rules as Article VI the Board has considered disputes on the merits and has sustained the carrier's action where there has been a substantial compliance with the provisions of the rule. And in some instances, where it has appeared that claimant's rights were not prejudiced, the Board has upheld the carrier in the absence of substantial compliance with the rule. But in all such instances the Board has recognized the validity of such rules and the necessity for maintaining their integrity.

That necessity is apparent in the instant dispute notwithstanding the overwhelming proof of claimant's guilt. To countenance the carrier's disregard of Article VI in this instance would establish a precedent which, at another time, might be invoked against an innocent man.

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 violated Article VI.

AWARD

Claimant shall be reinstated without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1944.