

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

NEW YORK CENTRAL SYSTEM

STATEMENT OF CLAIM: Claim of Steward J. S. Hough for time lost being held out of service September 11, 1942 to October 15, 1942, account not afforded a fair and impartial hearing such as Article 6 of the Stewards' Agreement contemplates; also, request for removal of reprimand assessed against his record.

OPINION OF BOARD: J. S. Hough was steward on Diner 594 on Train No. 11, Saturday, July 4, 1942. P. M. Wolfe, an inspector in the passenger service, made to his superiors a report concerning service on the diner in the morning of that day.

Hough was informed of the charges on August 5th, and was advised that a hearing would be held on August 7th. On August 6th, R. L. Sutton, Committeeman of the Brotherhood of Railroad Trainmen, advised the Assistant Superintendent of Dining Service that he would represent Hough and that he wanted all waiters present at the hearing.

Since no arrangements had been made to have the waiters present the hearing had to be postponed. Hough was subsequently notified that it would be held on September 10th. Sutton had not been notified so it was necessary to postpone the hearing until September 11th so that he could be present. On that day only three of the waiters were present. Hough and Sutton refused to proceed without the other waiters and the chef. Whether they had previously asked that the chef be called is disputed. It is not disputed that they had asked that all the waiters be called. When Hough and Sutton refused to proceed the Superintendent of Dining Car Service, who was in charge of the investigation, suspended Hough from service.

On October 15th a hearing was had with the chef and all waiters present but one, who had left the service. Wolfe was also present. All, including Hough himself, testified concerning the alleged incidents incorporated in Wolfe's report. At the conclusion of the hearing, the Superintendent said:

"In view of the fact that Mr. Hough has submitted to this hearing, I am going to permit him to return to duty pending our decision in his case."

Under date of November 2, 1942, Hough was advised of his decision, which reads as follows:

"The original charge involved failure to observe the rules, regulations and service requirements of the Dining Car Department. On this charge, I have concluded from the record that you did violate the rules, regulations and service requirements while on duty on DC 594, Train 11, July 4, 1942, for which a reprimand will be placed on your service record.

"On account of your unwarranted abuse of a witness, in the presence of your superior officers, at the hearing on September 11, 1942, and your refusal, as well as your representative's, to continue the hearing on said date, it was necessary to suspend you from service, in accordance with Art. VI (a) of the agreement, and charge you with insubordination. On this charge, I have concluded that the time which you have been out of service pending continuation of hearing is the result of your own election not to submit to hearing, and in view of your having been out of service for 35 days I shall consider that adequate discipline on the insubordination charge has been served thereby."

The employees have progressed the dispute to this Board asking that the reprimand be revoked and that Hough be allowed reparation for the period of his suspension. The pertinent provisions of the agreement are contained in Article VI, and provide:

"(a) Stewards will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses, pending investigation or decision. Witnesses will be examined separately, but in the event of conflicting testimony, those whose evidence conflicts will be examined together. . . ."

"(b) A steward required to attend investigation may be accompanied by an employee of his own selection, who will be permitted to question witnesses so far as the interest of the steward is concerned."

It is a cardinal rule of this Board that it will not interfere with disciplinary measures unless the action of the carrier can be said to have been arbitrary or capricious. The precise question to be determined is whether the carrier acted arbitrarily and capriciously in suspending Hough when he and Sutton walked out of the hearing on September 11th. For, of course, the original charges were minor offenses in contemplation of the agreement.

Whether refusal to submit to investigation on minor charges constitutes a major offense is to be determined by the rights accorded the employee by Article VI. The Article guarantees a fair and impartial trial to the employee under investigation but it does not give him the right to conduct the hearing. Implicit in the article is the right of the carrier to name the time and place of hearing and to conduct it. If this were not so it would leave the investigation subject to the caprice of the employee.

Conceivably, the conduct of the hearing by officers of the carrier might be so palpably unfair as to justify the employee in refusing to participate in it. His remedy, however, is not to walk out but to invoke this Board's jurisdiction to review the action of the carrier. In numerous instances this Board has revoked disciplinary measures imposed by carriers because of failure to accord the employee a fair and impartial trial.

The parties do not agree as to what was done or said on September 11th. We think, however, these facts are beyond controversy. The hearing had been postponed from August 7th to September 10th in order to comply with the employees' request that the waiters be brought in as witnesses. The hearing was again continued to September 11th so that Sutton could attend. Conceding that these delays were due to the carrier's neglect in not summoning the waiters on August 7th, and in failing to notify Sutton of the hearing on September 10th, nevertheless, on September 11th a majority of the interested parties were present—Wolfe, Hough, Sutton and three of the waiters. And the Superintendent was there to conduct the hearing. Had Hough and his representative acted in the spirit shown by the Superintendent, the hearing could have proceeded and have been continued, if necessary, to another date when the other waiters and the chef could have been present. The Superintendent manifested his willingness to proceed on that basis. But Hough and Sutton refused. We fail to see what the Superintendent could have done,

under the circumstances, to bring the issue to a head but to suspend Hough. We do not think he acted arbitrarily or capriciously in so doing. Under the circumstances, disclosed by the record, we think Hough's refusal to proceed with the hearing on September 11th did not constitute a minor offense in contemplation of Article VI (a).

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1944.