

Award Number 3109

Docket Number DC-3080

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

STATEMENT OF CLAIM: Claim of Dining Car Steward C. O. Wilder for time lost on account of being suspended thirty (30) days after investigation held at the Superintendent of Dining Car's Office, Cincinnati, Ohio, September 23, 1944.

OPINION OF BOARD: This is a Joint Submission. The Claimant, a Dining Car Steward, was given a hearing and suspended for thirty (30) days without pay for dereliction of duty, discourtesy to a passenger and conduct unbecoming an employe.

General Rule K-2 of the Respondent Carrier reads:

"To avoid annoyance to the public, employes and others authorized to transact business at stations and on or about trains, must be courteous, orderly and quiet."

At the hearing the Claimant was asked: "Do you admit that you addressed Mr. Weddell (the complaining passenger) in a discourteous manner?" To this the Claimant replied: "After Mr. Weddell's telling me I was a damn liar, I do admit that my answer to him was discourteous." (Emphasis supplied). The Claimant also volunteered the information at the hearing that he used extremely vulgar language in addressing this passenger. This is enough to lead us to the conclusion that the charge was sustained by the evidence. While provocation may be a circumstance to be taken into account in fitting a penalty to the offense, it never justifies violation of rules requiring railroad employes to be courteous in their relations to the traveling public.

Assuming, without deciding, that the passenger did make an unreasonable request and that he became abusive in the manner indicated by the answer to the above question, the fact remains that it was the positive duty of the Claimant to remain calm and courteous, notwithstanding. Had he done so the cause of the misunderstanding would probably have evaporated; but if it had continued the Claimant could and should have reported the incident to the Conductor in charge. Thirty days suspension for the Claimant's admitted misconduct does not impress us as being so out of line as to suggest that the Carrier's action was prompted by prejudice or passion.

The Petitioner also says that the complaining passenger ought to have been produced for cross-examination at the hearing. It is only necessary to observe, in this connection, that the hearing was held at Cincinnati; that the passenger resides at Richmond, Virginia; and that the Carrier possesses no power of subpoena. The record discloses that the Claimant was advised of the

name and address of the passenger well in advance of the hearing and that he made a trip to Richmond for the purpose of offering an apology for his conduct toward the passenger. Under these circumstances, there is no merit in this complaint.

It is also asserted that in its consideration of the charges, the Carrier ignored a material statement made by a Brakeman, relative to the incident out of which the complaint against the Claimant arose. The statement referred to is contained in a letter written by the Petitioner's General Chairman to the Carrier's Vice-President four months after the hearing was concluded. It could not possibly have affected the result of the hearing.

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 parties waived oral 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 record discloses no ground for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.