

Award No. 3187

Docket No. DC-3009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward.F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 370, for and in behalf of Mr. R. R. Lynch, Waiter, to have his record cleared of discipline imposed by suspension of eight (8) days, and to be compensated to the extent he has suffered as a result of such discipline in abuse of the Carrier's discretion.

OPINION OF BOARD: Claimant was a Waiter in the Dining Service Department of the Carrier. On October 1, 1944, while working as a Waiter, two service men entered the Diner and seated themselves at Claimant's station. After eating some sandwiches and drinking some beer, rum and whiskey, they left the Diner without paying their bill. The Waiter-in-Charge instructed Claimant to follow the men and collect the amount due. Claimant says that he followed them into the next car and at a point about the center of the car, he asked them to pay the bill. According to Claimant, they assumed a belligerent attitude and moved toward him as if to attack him. He says he backed to the vestibule of the car where they grappled with him. The Train Conductor was called and immediately stopped the affray. One of the service men informed the Conductor that Claimant hit him. This man had a cut over the eye from which he was bleeding profusely. Claimant admits that he did not deny that he struck the service man at this time. He claims that during the scuffle, they bumped heads and that the injury was a result thereof. Claimant admitted that he lost his temper and apologized for so doing in the presence of the Train Conductor. The Train Conductor says that he did not see Claimant strike the service man but that Claimant did have the service man by the shoulders at the time he intervened and stopped the trouble.

While Claimant denies vigorously that he struck either of the two men, he makes many statements which are inconsistent with the other evidence produced and circumstances shown. He says that he first accosted the two men in the middle of the next car. The Train Conductor says he was working in the middle of that car at the time of the occurrence and did not see any of the parties to the affray. The Brakeman called the Train Conductor to stop a "fight" in the vestibule of the car. The circumstances seem to indicate that a fight was in progress to which Claimant's loss of temper was a contributing factor. The Train Conductor in handling the situation saw fit to warn the Claimant against the striking of passengers which indicates that as he observed the situation, the Claimant had struck the service man, a fact which Claimant did not at that time deny. The evidence and circumstances were very conflicting. There is no indication that the action of the Carrier was arbitrary, capricious or clearly wrong. There having been no abuse of discretion by the Carrier in handling a matter of discipline upon very conflicting evidence, no basis for the intervention of this Board arises.

The belligerent attitude and unjustifiable conduct of these two service men is a mitigating circumstances which the Carrier evidently took in consideration when it disciplined the Claimant by suspending him from service for only eight days. Consequently, we are of the opinion that no basis exists for disturbing the action of the Carrier.

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 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 action of the Carrier in disciplining the employe was not improper.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.