

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES OF AMERICA, CIO
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Discharge of George M. Cole, red cap, not sustained by proof. Method of conduct of investigation does not conform to fair methods of procedure such as decisions of the National Railroad Adjustment Board have approved.

OPINION OF BOARD: Claimant was employed as a Red Cap in Carrier's Chicago Terminal. He was charged with soliciting and accepting a fee of \$3.00 from each of two passengers for holding seats for these passengers on Train No. 7, leaving Chicago for Los Angeles on February 24, 1945. After investigation and hearing, Claimant was dismissed from service. He contends that he did not receive a fair and impartial hearing and that no opportunity was afforded him to ask questions of the complaining witnesses as provided by Rule 10 (f) of the Supplemental Agreement of November 1, 1940.

The evidence of the Carrier was in the form of a statement by Sgt. Gerald L. Pfaffly of the Military Police and an affidavit signed by Mrs. Mary Neil and Miss Irene Batiste, the two passengers who were alleged to have paid the \$6.00 in fees heretofore mentioned. Claimant was examined with reference to the transactions and disputed all incriminating statements made against him. The statement of Sgt. Pfaffly was a recitation of the transactions as they were told to him by the two women passengers and was clearly hearsay and of no probative value in deciding the issues involved in the investigation. The question before us is the sufficiency of the affidavit signed by Mary Neil and Irene Batiste to sustain the decision of the Carrier.

The affidavit recited in substance that Mrs. Neil and her sister, Miss Batiste, were leaving Chicago on the evening of February 24, 1945, by train on the Carrier's road. Mrs. Neil says that Red Cap 58 (Claimant) asked them if he could handle their luggage to the train and explained that he could secure seats for them if they would pay him \$5.00 each for the service. This was refused and his second offer of \$3.00 each was accepted. The baggage was placed on the train and the money was handed to Claimant, folded in a small wad as he had directed. Mrs. Neil then discovered that the car was to be set out at Omaha and was not going through to Los Angeles as Claimant had said. She thereupon stated the foregoing facts to Sgt. Pfaffly of the Military Police whose report subsequently came into the possession of the Carrier and was the source of the charges lodged against the Claimant.

It is not necessary that witnesses be present at an investigation in order to meet the requirements of a fair and impartial hearing. The employee charged is entitled to have the names and addresses of the persons whose

written statements are to be used against him in order that he or his representative may be present when the statement is taken, or that he or his representative may interview such persons with the view of determining the truthfulness of their stories. This is a right which the employe may insist upon even if it requires an adjournment of the investigation until it can be done.

The record shows, however, that no objection was voiced by the employe or his representative to the use of the affidavit. Neither was it claimed that they had had no opportunity to interview the affiants or that they then desired such an opportunity. It must, therefore, be assumed that Claimant was content with the evidence of the two women passengers in the form in which it was set forth in the affidavit. He is now in no position to assert that its use constituted a prejudicial departure from the requirement of a fair and impartial hearing.

The testimony of Claimant was in direct conflict with that of the two women passengers. It is not our province to weigh the evidence or to pass upon the credibility of the witnesses. The evidence of the two women passengers shown by the affidavit, if believed, is amply sufficient to sustain the charge. The Carrier believed their evidence rather than that of the Claimant. We can find no justifiable reason to say that the Carrier should have accepted the version of the Claimant rather than that of the two women passengers.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1946.