

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES—LOCAL 351

CHICAGO & NORTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, on the property of the Chicago and North Western Railroad Company, for and in behalf of Mr. Iray Pettiford, waiter-in-charge, to be returned to service with seniority rights accumulated and unbroken and with compensation, to the extent suffered, retroactive to May 31, 1946, as a result of unjust dismissal in violation of the current agreement, particularly Rule 26 thereof and in abuse of the Carrier's discretion.

OPINION OF BOARD: We do not think the record shows any waiver or loss of claimant's right of appeal by the manner in which the negotiations were handled on the property and no such claim was properly made there.

The record discloses that Iray Pettiford was a regularly assigned waiter-in-charge of Car No. 1600 of the Carrier's Chicago to Milwaukee run on train No. 149-156 and had been employed by the Carrier for more than ten years.

On or about May 10, 1946, he secured a leave of absence for the purpose of going to Baltimore, Maryland, to arrange for the burial of his sister. He secured leave of absence by telephone. He talked with Wilbur C. Jans, whose memorandum, made at the time, shows it to have been for ten days, which would expire on May 20, 1946. Claimant, however, is of the impression he asked for and was given a period of 10 days or more.

On his return to Chicago, the exact date of which is not shown, he found a letter awaiting him from the Carrier. This letter, dated May 22, 1946, advised him that he had failed to protect his regularly assigned run on May 22, 1946, and was directed to attend an investigation thereof at the office of the Superintendent of Dining Cars on Wednesday, May 29, 1946.

This hearing was had pursuant to Rule 26-(a).

It ended in a manner not in keeping with a properly conducted hearing such as is contemplated by Rule 26(a) of the agreement and this was not due to any fault of the employee in so far as the record discloses.

After this hearing neither the claimant nor his representative heard from the Carrier until July 22, 1946, when the General Chairman of Mr. Pettiford's union telephoned the Superintendent of Dining Cars with reference thereto. The General Chairman was then advised of Pettiford's dismissal. This is apparently the first knowledge either Pettiford or his representative had thereof although the Carrier claims that it attempted to notify

Pettiford thereof both by mail and telephone immediately following the entry of his dismissal on May 31, 1946. However, there is nothing in the record to positively show that this notice was ever received. The dismissal is based on the charge that claimant failed to protect his assignment on May 22, 1946.

It is the rule of this Board that it will not substitute its judgment for that of management in cases of discipline unless it can be said that the Carrier has abused its discretion in the action taken.

It is easily understandable how this misunderstanding could have occurred and both sides have been honest in their beliefs. That the claimant could have honestly thought he had up to fifteen days of leave and consequently did not protect his regular assignment on May 22, 1946, seems reasonable. Likewise, the Carrier's record shows that Pettiford had overstayed the leave granted him and failed to protect his regular assignment. But in taking from the claimant his job, together with all his seniority rights which he had earned by more than ten years of service, just for the one offense with which he is charged and which he committed under the circumstances here related we think the Carrier abused its right of discretion.

Under the circumstances we think that justice to both Carrier and claimant will be served by returning the claimant to service with his seniority unimpaired but without any right to retroactive compensation.

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 Employees involved in this dispute are respectively carrier and employee 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 the agreement to the extent indicated in this Opinion.

AWARD

Claim sustained as to request that claimant be returned to service with seniority rights accumulated and unbroken, but denied as to any retroactive compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1947.