

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES**

**ATLANTIC COAST LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 495, for and in behalf of Mr. J. E. Smith, Chef, to be returned to service with seniority rights accumulated and unbroken and with compensation to the extent suffered, retroactive to May 13, 1946, as a result of his unjust and unwarranted dismissal from service, in abuse of the Carrier's discretion and in violation of the current agreement particularly Rule 2 thereof.

**OPINION OF BOARD:** It is the claim of the Joint Council Dining Car Employees that Chef J. E. Smith was unjustifiably dismissed by the Carrier in violation of Rule 2 of their agreement.

On May 7, 1946, Cooke, General Superintendent Dining Cars, wrote Chef J. E. Smith to appear in his office at 2:00 P. M. on Monday, May 13, 1946, for a hearing on the following charges:

"(1) You are charged with serving and/or allowing food to be served from your kitchen by accepting verbal orders from waiters and without the use of meal checks on diner Sarasota, Train 92, April 15, 1946, in violation of paragraph (c) of the Manual of Instructions for Dining and Tavern Car Employees."

Charges (2) and (3) are in effect the same except Charge (2) refers to Train 91. Charge (2) relates to violations on April 19, 1946, and Charge (3) relates to violations on April 21, 1946.

Rule 2 of the parties' effective agreement provides in part: "At a reasonable time prior to the hearing the employee shall be apprised of the precise charge against him, . . ." We find the letter of May 7, 1946, of the General Superintendent Dining Cars addressed to Chef Smith fully complied with this requirement.

Rule 2 also provides: "Employees on seniority roster will not be disciplined or dismissed from service without a fair and impartial hearing." From the record we find that Chef Smith had a fair and impartial hearing.

The principal question remains as to whether or not the record establishes that Chef Smith is guilty of the charges placed against him. The evidence discloses that during the limited time the witnesses were in the dining car on each of the days the charges are made a number of patrons were served on verbal orders and without the use of meal checks. The only fair and reasonable inference to be drawn from this situation is that whatever was thus served was obtained from the kitchen on verbal orders and without the chef's portion of a meal check.

Chef Smith was the responsible employe in charge of the kitchen. By Rule 18 (e) of the Manual for Instructions for Dining and Tavern Car employes a Chef is charge with the following duty: "Chef's portion of meal check must be in the kitchen before any food or drink is given to waiter. . . . A chef serving or allowing food or drink to be served from his kitchen in violation of the provisions of this paragraph shall be subject to dismissal." A copy of this Manual was received by Chef Smith on September 2, 1943. On August 22, 1944, Carrier prepared a bulletin addressed to all Chefs, copy of which Chef Smith received, calling their particular attention to Rule 18 (e) of the Manual of Instructions and advising them of their duties thereunder.

We find the evidence establishes that Chef Smith failed to carry out his duties as required by Rule 18 (e) of the Manual for Instruction of Dining and Tavern Car Employes and that his dismissal by the Carrier was proper.

**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 Employe involved in this dispute are respectively carrier and employe 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 Carrier did not violate the rules of the parties' effective agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.