Award No. 3775
Docket No. DC-3798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 370 on the property of the New York Central System (Lines East) for and in behalf of Mr. Frederick C. Ferguson, Waiter-in-Charge, to have his record cleared of the charge of "Gross discourtesy and rudeness to guest, DL 550, Train No. 16, August 11, 1946," and compensated to the extent suffered by reason of a suspension of ten (10) days imposed upon him by Carrier in abuse of its discretion and in violation of the current agreement particularly Rule 6 thereof.

OPINION OF BOARD: The Joint Council appeals in behalf of Frederick C. Ferguson, Waiter-in-Charge, from a finding that he was guilty of "Gross discourtesy and rudeness to a guest." It seeks to have his record cleared of the charge and that he be compensated for the ten days he was suspended.

The incident complained of relates to what happened on D. L. 550, Train 16, on August 11, 1946, involving a passenger by the name of Margaret B. Milliken and Waiter-in-Charge Ferguson.

The Joint Council complains that Ferguson did not receive a sufficient notice of the nature of the charge against him and that he did not have a fair and impartial trial as provided by Rule 6 (a) of the parties' agreement.

Rule 6 (a) provides as follows:

> "Employes shall not be disciplined, suspended (except pending investigation) or dismissed without a fair and impartial trial. Investigation shall be held as promptly as possible, the employes being notified in advance of the nature of the charge and the time of investigation. Witnesses will be examined separately, but in the event of conflicting testimony, those who evidence conflicts will be examined together. When discipline assessed is actual suspension, time lost attending investigation shall be applied against the actual suspension time."

On September 28, 1946, Ferguson was notified of the nature of the charge against him as follows:

"Mr. Frederick C. Ferguson,
1830 Paulding Avenue,
Bronx, New York.

Dear Sir:

You are hereby notified, in accordance with the rules of agreement between this Company and the Hotel and Restaurant Em-

ployes' International Alliance, Local 370, to report to Room 103, 847 Morris Avenue, at 11:00 A. M., Friday, October 4th, for hearing on the following matter:

> Gross discourtesy and rudeness to guest, DL 550, Train 16, August 11, 1946.

Your attention is called to your right, under schedule rules, to have representation at this hearing.

Yours truly,

(s) A. G. Sencak."

The evidence used against Ferguson consisted of a letter from the passenger, of which Ferguson had been informed prior to the filing of the charge against him.

Under numerous awards of this Board the Carrier's letter gave Ferguson sufficient notice of the nature of the charge against him and, the letter of the passenger was competent evidence that could be used at the hearing. See Awards 2770, 2772, 2793, 2945, 2978, 3109, 3125, 3213 and 3498.

The record discloses that the incident occurred when the passenger wanted to be seated at a chair which was vacant at one of the tables. Ferguson testified that the passenger wanted this chair out of order; that he very politely told her why she couldn't have it; and that thereafter he gave her a seat just as soon as he could.

The passenger's version of the incident, as related in her letter, is as follows:

> "I went in to breakfast after eight o'clock and found a buffet car. I was traveling alone and did not notice at first there were people waiting in the rear.
>
> A colored steward-waiter suggested I wait a moment which I did.
>
> Noticing a single seat near the entrance I suggested I take it. At that he loudly and in quite the most objectionable manner I have ever been subjected to, told me what I could and could not do. He was rude beyond words and I naturally asked him how he dared to speak to me in such a manner.
>
> The attention of the entire car was centered upon us which pleased him greatly. Said he: 'You do not like the truth so I'll tell it to you—you have no right to be served before these people, etc., etc.'
>
> In my years of travel and my frequent use of this train on your road, I have never encountered such shocking treatment and seriously object.
>
> Later when he had a single seat, I asked my waiter if the car was put on at Albany and what was the man's name? He returned to the table and loudly said, 'Madam, you do not need my name, only the car.' I replied nothing.
>
> I asked the Pullman conductor to whom I should address my complaint and he had already heard of the episode from another passenger."

Ferguson admits the passenger asked for his name, that he did not give it to her; that he gave her the car and train number instead, advising her that they were sufficient. He also admits that the passenger was dissatisfied and upset but testified that it was due to her not getting the seat when she wanted it. He further testified that he was courteous and treated her in a polite and proper manner at all times and that when she had finished breakfast he very courteously corrected her mistaken idea that she was being overcharged. He properly reported the incident when he completed his run.

While the evidence is in conflict, however, we cannot say that the Carrier's decision is not sufficiently supported thereby. Nor do we find the punishment imposed arbitrary or unreasonable. We have come to the conclusion that the action of the Carrier must be sustained.

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 Carrier has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1948.