

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of N. H. Caesar, Dining Car Waiter, who was discharged from the Dining Car Service as a result of an investigation.

We claim that the charges against Caesar were not proved by the investigation and that the carrier is in violation of Rule 24 of the existing agreement.

Further, this claim is for the reinstatement of Waiter Caesar with full seniority rights and full pay for all time lost as a result of the action by the carrier.

OPINION OF BOARD: On July 18, 1947, an investigation was held to determine the truth or falsity of charges made against Waiter N. H. Caesar. The charge was in substance that on June 20, 1947, Caesar was guilty of improper conduct and insubordination, that he used vile and obscene language towards Steward W. F. Kowrack in the presence of passengers and that he threatened bodily injury to Steward Kowrack. Subsequent to the investigation, Caesar was found guilty and dismissed from the service. The Organization has appealed to this Board from this decision.

On the occasion out of which this difficulty arose, the evidence shows without dispute that a sailor came into the pantry where Caesar was working, offered Caesar a drink of whiskey and poured out a drink for him. About this time, Steward Kowrack appeared, called Caesar's attention to the rule which forbade persons other than crew members being in the pantry and directed Caesar to get the sailor out. Shortly thereafter Caesar came into the dining car and engaged in a loud argument with the Steward.

The Steward testifies that Caesar called him vile and obscene names which are shown in the record but will not be repeated here. He says also that Caesar said he, Kowrack, knew nothing and had no business telling him anything. He says Caesar followed him through the dining car to the cash register and abused him with obscene names before the passengers.

Caesar denies the statements made by Kowrack and charges that Kowrack used vile language toward him. This, Kowrack admits. Other employes on the car recalled the improper language used by Kowrack but claimed they heard nothing said by Caesar.

There is evidence in the record which, if believed, was sufficient to sustain the finding of guilt by the Carrier. We have repeatedly said that we will not pass upon the credibility of witnesses and the weight to be given

to the testimony of each. It is not the function of this Board to substitute its judgment for that of the Carrier, or to determine what we might have done if it had been our duty to make the decision in the first instance. We can properly act when an examination of the record reveals that the action taken was unjust, arbitrary or unreasonable. When there is evidence which supports the charge, even though it may be disputed, the imposition of discipline cannot be said to be unjust, arbitrary or unreasonable. Award 4068.

The Organization contends that the evidence shows that Kowrack was guilty of using vile and obscene language. In fact, Kowrack admits it. But we are not here concerned with the conduct of Kowrack as it bears upon the guilt or innocence of Caesar. The guilt of Caesar cannot be excused because Kowrack may have been guilty of a similar offense.

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 Employees 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.