

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of Aaron Moore, former waiter of the Dining Car Department of the Baltimore and Ohio Railroad Company, who was dismissed from the service as the result of an investigation held on December 19, 1947 during the course of which the charges were not proved.

We claim that the discipline assessed against Mr. Moore was excessive and an abuse of Carrier's discretion.

Therefore, we ask that this claimant be restored to service with seniority and other rights unimpaired and pay for all time lost as a result of Carrier's action.

OPINION OF BOARD: The facts in this case, as shown by the record, reveal that there is substantial agreement on the occurrence which led to the dismissal of Claimant. Witnesses of both parties agree on all pertinent facts surrounding the controversy, the basis of the dispute which resulted in the dismissal.

The transcript of evidence set out in the record shows that on the morning of December 10, 1947, Claimant, Aaron Moore, was assigned to duty as Waiter on Car 1060, Train 509, at Jersey City; that G. M. Perrin was the Steward on the car in question; that Steward Perrin instructed Waiter Moore to remove his hat and newspapers from the linen locker on the car, and that later Steward Perrin discovered his instructions had not been carried out; that he reprimanded Mr. Moore and directed that he remove those newspapers and hat from the linen locker without further delay. Claimant contending that he was busy setting the buffet when first directed in the matter and had not completed this job at the time of the second request. There is some evidence in the record that this was the true situation. However, instead of calling attention to this fact and stating that he would give the matter his attention, Waiter Moore called the Steward a vile and obscene name and when asked regarding it, repeated it. There is also some evidence in the record that Mr. Moore wanted to fight the Steward. The Claimant admitting using the vile name, directed to the Steward personally.

The Steward reported the incident, a hearing was held and the result was the dismissal of Claimant.

The evidence shows that the Steward did use a profane word or words, but that they were not used as applying directly to the Claimant but were used with reference to newspapers and hat in directing that they be removed

from the linen locker, the duties in connection therewith being included in Claimant's assignment.

It is argued that the Steward should have been reprimanded also in this matter. That question is not before us. The question of insubordination of a sufficient nature to justify dismissal of Waiter Moore is before us.

The record shows sufficient evidence to justify dismissal for insubordination. The Claimant admits that he used the language. His conduct was inexcusable and constituted sufficient grounds for dismissal for insubordination.

The claim is denied.

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:

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 there was no violation of the Agreement, and the dismissal of Claimant was justified by the showing made.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.