

Award No. 4237  
Docket No. DC-4005

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**LeRoy A. Rader, Referee**

**PARTIES TO DISPUTE:**

**ORDER OF RAILWAY CONDUCTORS**

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** For money monthly guarantee of 240 hours per month February 27, 1947, together with vacation pay, up to and including, the date returned to service for Steward Roy Murphy—Also that he be reinstated with seniority rights unimpaired.

**OPINION OF BOARD:** Two questions are presented in this claim. First, was Claimant Roy Murphy, Dining Car Steward, given a fair and impartial hearing on the charges made, and, second, did the evidence taken justify the result.

A careful reading of the evidence taken at the hearing leads to the conclusion that the complaining witness, Mr. H. G. Wyman, Superintendent of Dining Cars, was over-zealous and apparently (from the record) confused the proper status of the complaining witness with that of functions belonging to others who were presumed to be conducting the investigation. Therefore, on the first proposition it is concluded that the fairness of the hearing left considerable to be desired. The conduct of Mr. Wyman during the hearing cannot be approved.

On the second matter for consideration, it would seem that Mr. Murphy's stewardship of his dining car was not entirely up to a standard which could be said to approach that of excellence and could hardly be construed to be exactly sanitary.

In view of the Findings above made, it appears that the penalty exacted and disciplinary action taken, is excessive; that under the circumstances disclosed by the record a period of thirty days suspension was warranted.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Claimant Murphy be restored to service with seniority and vacation rights unimpaired, and that he be compensated in accordance with the claim, for time withheld from service, less a period of thirty days suspension.

**AWARD**

Claim sustained in accordance with Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1948.