Award No. 4620
Docket No. DC-4580

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Steward J. E. Standard be returned to service and his discipline record cleared on account of being held out of service April 11th, 1948, to April 23rd, 1948, without an investigation under the 6-A Rules. He was notified of dismissal May 6th, 1948, and should be paid for all time lost under Rule 7-B-1 of our current agreement.

OPINION OF BOARD: Claimant J. E. Standard was taken out of service April 11, 1948, on the charge that "while you were on duty as Steward, Train #72, April 2, 1948, you refused to serve patrons." He was dismissed May 4, 1948, after trial.

The details of the incidents that led up to the charge before us and the dismissal are spread throughout the trial record. They happened on a single trip on a train that made a daylight trip from Pittsburgh, Pennsylvania, to New York City. The train carried no club car. The diner, of which Claimant Standard was in charge as Steward, was licensed to serve beer and liquor. Some passengers were refused service not only in the diner but in their Pullman compartment. Four or five of these passengers complained to the Train Conductor. He passed these complaints on to the Steward who expressed resentment as interference with his responsibility. The Train Conductor is, in fact, in charge of the train and responsible for its overall service to patrons.

When he arrived in New York the Train Conductor reported the incident to his superiors and furnished the names of five complainants, one of whom said he was a large user of the Carrier's freight service. The Train Conductor said there were others whose names he did not record who also were refused service. None of these complainants appeared as witnesses at the trial. Copies of the letters they wrote the Carrier, following a visit from a Carrier representative to express Carrier's regrets, were furnished to Claimant before the trial and introduced into the record.

We need go no farther than Claimant's own testimony at the trial to find confirmation of the charge. The number of times during the day and the specific hours and specific persons involved are in dispute but the fact that some persons were refused service on at least two occasions is admitted by Claimant. Either because he did not know the regulations governing his functions in connection with the beer and liquor service, as set forth in Manual of Instructions, or was confused about them, or didn't approve of them, or deliberately misinterpreted them is not wholly clear, but that he personally went to the Pullman drawing room occupied by two or three of the complainants and told them it was against regulations to serve them in their car is admitted by him. There is no such prohibitive regulation; on the contrary, Carrier welcomes that business.

Similarly, that he refused to serve two other passengers as they approached New York City also is not denied by Claimant. In that case the dispute is about the number of miles or the number of minutes the train was out of New York when the patrons came into the diner and asked for service. Whether the train was thirty minutes or forty-five minutes out of the terminal is in dispute, but that they were refused service is not disputed by Claimant. He explained he was closed to take inventory of stock to complete his report.

Although stewards are allowed to "break down" fifteen minutes before entering the terminal, regulations require that one station be kept open and service be given until arrival. In defense of his refusal to follow these instructions, Claimant explained he wanted to have his reports completed upon arrival because of the Carrier's reluctance to pay overtime for such work when done after arrival. He cited an experience he had had on a St. Louis run where such overtime was not allowed.

Service of the character provided by Carrier in the diner, of which Claimant Standard was in charge, has at least two purposes, one, to add to the comfort and convenience of passengers, and another, to make a profit or keep losses incident to such accommodation to a minimum. Common Carriers are especially vulnerable to public criticism. When properly handled dining service tends to build good will for the Carrier; when mismanaged or handled in such fashion as to antagonize passengers or merely displease them, it becomes a liability rather than an asset, one that may affect their freight business as well as their passenger business. That would be true even if the railroad industry were not faced with sharp competition for passengers and freight from other forms of transportation service.

The responsibility here is a joint one; the Carrier furnishes the facilities and food and other materials for service. The Carrier makes the regulations governing service. The Steward is responsible for the effective use of the facilities and the materials in accordance with the prescribed regulations. His responsibility is to please patrons within the framework of these governing regulations. Presumably he may suggest changes in regulations through appropriate channels but this is not to be taken that he is privileged to ignore them or disregard them of his own accord.

By his own admission, Claimant Standard did refuse service as charged. We may question whether dismissal under these circumstances, after six years' service, is the best way to build morale and improve the dining service but we are disposed, in this case, to let the Carrier assume the responsibility it has elected to take. Award 373.

The fairness and impartiality of the trial has been questioned in Claimant's behalf. It is true the complainants were not present at the hearing for cross-examination. Claimant, however, was furnished copies of their letters in advance of the trial. The Train Conductor, who heard the complaints and reported them to his superior after he had discussed them with Claimant on the train where they originated, was present. He testified and was cross-examined by Claimant.

It has been argued in Claimant's defense that extraneous material was introduced at the trial. An employe's record can hardly be said to be extraneous in a situation such as the one before us but in any evant much of it, consisting of copies of letters of commendation, was as favorable to him and his record as the material from his folder showing previous disciplinary action was unfavorable. The record indicates a stand off on that score. Award 3342.

The claim that he did not have a reasonable opportunity to defend himself is not sustained by the record.

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 we do not find sufficient justification for reversing Carrier's decision to order reversal here.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1949.