

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Steward F. C. Burns be returned to service and his discipline record cleared on account of being held out of service February 24th, 1948, to March 10th, 1948, without an investigation under the 6-A Rules. He was notified of dismissal May 4th, 1948, and should be paid for all time lost under Rule 7-B-1 of our current agreement.

OPINION OF BOARD: This is a discipline case involving Steward F. C. Burns. In many respects it resembles Award Nos. 4620 and 4621. Train 54 left Chicago Saturday, January 3, 1948, and arrived in New York City Sunday evening, January 4, 1948. It was composed of coaches and Pullmans and carried two dining cars coupled back to back. These dining cars were not operated as a unit; except for a "consulting" regulation each Steward worked independently of the other. Claimant Burns was in charge of the diner next to the coaches; the other was managed by a Waiter-In-Charge. A regulation governing the manner in which stewards are required to work under these circumstances is found under "Two Dining Cars in Train" in the Manual of Instructions, "When two dining cars are operated in same train, you must confer with the other steward and jointly decide upon meal announcements that will best assure a fairly divided patronage. Consult during meal toward equalized service."

Claimant, who had made this run several times and who was familiar with the habits of Pullman passengers with respect to late sleeping and late breakfasting on Sunday morning, maintains that before they left Chicago he explained this to the Waiter-In-Charge of the adjoining diner, who was making this run for the first time, in an effort to equalize the Sunday breakfast and luncheon load. The failure of the Waiter-In-Charge to recall the details of this conversation at the trial is not material here. It is reasonable to suppose that an experienced steward would make some such suggestion in his own interest, if for no other.

The regulation requires more than this, however; it requires "consultation during meal toward equalized patronage." There was no consultation after the train left Chicago.

The charge arises out of two complaints, one, a letter from a patron, and the other a report from a Supervisor of Dining Service who boarded the train at Harrisburg, Pa. The writer of the letter of complaint did not appear as a witness. Two waiters were in the car when he entered with members of his family. They testified that he was told either that the car was closed or that service would be available later. The exact exchange of words is in dispute. At any rate he refused to leave the car and was served later. His letter was voluntary. The incident which is there described happened before the Supervisor boarded the train. He did not see it but he did observe and report that the manner in which Claimant operated his service caused several passengers to wait long periods while his diner was closed or not serving.

The voluminous record is replete with contradictions but it is clear, from Claimant's own statements, first, that he did shut off breakfast service before all of the passengers who wished it were served, and, second, that he did not consult with the Waiter-In-Charge of the other diner "during meal toward equalized patronage."

That he was aware of the line of passengers waiting for service in the other diner while his own car was not serving is clear from the undisputed statement of a member of the train crew, a ticket-collector, who told him about it and suggested he open his car to relieve it.

Claimant justifies the pattern of service he followed by citing a regulation which requires diners to be swept and dusted "between meals." He cut off breakfast service, closed the car—this does not mean locked—and after an interval opened for luncheon. This was approximately 11 to 11:15 a.m. The other diner served breakfast until 1:30 p.m. Carrier is aware of the "between meals" regulation for cleaning the car but cites another one that says, in effect, service is *not* to be refused at *any time* nor should service be shut off for breakfast before starting to serve lunch. Claimant, after four years' service, admits he did not know he could overlap meal services in this fashion.

That some discipline is indicated is clear but we venture the opinion that if the Carrier relied wholly on the evidence produced at the trial we would question the validity of discipline as severe as dismissal on this one charge. The Carrier, however, reached back into Claimant's record to introduce additional evidence from previous investigations in connection with his service on other trains. Warrant for this is found in Awards 430 and 3342.

Taken together they leave little doubt of the failure on the part of the Claimant to apply the regulations consistently either because of neglect, or disagreement with them, or lack of commanding familiarity with them. There is no indication in the record that Claimant suggested changes in the regulations.

It is not necessary to repeat here what we already have said in Award Nos. 4620 and 4621 with respect to the purpose of dining service and the necessity on the part of the Steward to adapt himself and his plan of operation, within the limits of Carrier's regulations, to the needs and wishes of patrons. The facilities belong to the Carrier; the service belongs to the patrons. On the whole record we conclude we are not warranted in overturning Carrier's decision, Awards 71 and 373.

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 Employee 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 we are not warranted in overturning Carrier's decision.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 18th day of November, 1949.