Award No. 4716
Docket No. DC-4641

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Request for reinstatement and pay for all time lost for Dining Car Steward W. W. Miller on account of being unjustly dismissed from the service after an investigation held in Mr. Patterson's office on June 9, 1948.

OPINION OF BOARD: Claimant, a dining car steward, was found guilty of a violation of Carrier's General Rule 20 in that neither proper meal checks were used nor cash remittances made in connection with meals served to passengers in assigned Pullman space on two occasions, to wit: on May 18, 1948 and on May 31, 1948. As a result of the incidents leading up to the charge against the claimant, two waiters were also subjected to disciplinary investigations and dismissen from the service of the Carrier.

Employes contend that the claim should be sustained for the following reasons:

1. Carrier violated the investigation rule in that claimant and his representatives were deprived of the privilege to be present at the investigations of the two waiters in order to hear all the evidence.

2. That Carrier's officer had prejudged the case prior to holding of the investigation in refusing to hold a joint investigation and in holding the investigation at a time when the balance of the dining car crew were not available.

3. That a statement in the notice of charge which indicated that claimant's past work performance would be reviewed at the time of the hearing was improper.

The investigation rule is quoted in full in the Employes' submission and therefore will not be requoted here. We do not find any provisions which would support the first contention of the Employes. Paragraph (d) of the rule in our opinion clearly means that the employe under investigation, with a representative of his choice, has the right to be present at a hearing wherein he is the accused and there has a right to hear all the evidence. It does not in our opinion require the Carrier to permit any employe (not there in a representative capacity on behalf of the accused employe) to be present at a hearing or investigation affecting another.

With respect to Employes' second contention, here again we find no requirement in the rule that Carrier hold a joint investigation. In a case of this nature it may well be argued that a joint investigation would be more practical and might lead to a fuller development of all the facts. As to that, reasonable minds may differ. In any event the employe is protected against

the possibility of judgment being passed upon him because of incomplete testimony in that he has the right to have present such witnesses as he may desire to give testimony. As to the time of holding the hearing we find no prejudice against the employe in that. Clearly, if he or his representatives felt that additional testimony was material to the case, it is reasonable to conclude that a postponement or continuance would be requested. A denial of a reasonable request for a postponement might well be considered as evidence of bias but here we find no such request. There is a letter in the file written to Carrier before the trial which the Employes represent as a request for a postponement but which, in our opinion, was merely an extension of their controversy with the Carrier over their demand for a joint trial. In any event, the waiters were present at the investigation and they were not questioned by the employe or his representative.

The third contention of the Employes is untenable in view of the many awards of this Board upholding the propriety of review of past records for purposes of assessing discipline.

It has also been argued on behalf of the Employes that the claimant was the victim of an entrapment. It appears that the main witnesses against the claimant were a Mr. and Mrs. Denton who were furnished free transportation by the Carrier in exchange for their investigatory services. It is, however, generally recognized that inspectors unknown to employes, particularly in dining car service, are necessary in order to afford a check on whether or not employes are properly discharging their duties. Surely where there are manifest possibilities for systematic looting of an employe's revenue by manipulation of accounting checks, an occasional spot inspection is warranted. Here the conduct of the investigators was no different than that of ordinary travelers. No lure nor persuasion was used to ensnare the claimant into the commission of the offense charged. The facts do not support the argument that the employe was the victim of an entrapment.

We have examined the transcript of the investigation with meticulous care because of the seriousness of the charge against the claimant. We do not find evidence of bias or prejudice such as would warrant setting it aside. The conduct of the hearing official, though firm, was not, in our opinion, arbitrary or partial. The evidence adduced at the trial was substantial and was sufficiently positive to support the Carrier's finding of guilt. The penalty of dismissal, though harsh, was not out of proportion to the character of the offense.

It follows that a denial Award is in order.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.