

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

DINING CAR AND RAILROAD FOOD WORKERS UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Dining Car & Railroad Food Workers Union, for and in behalf of W. H. Faison, that he be returned to service with seniority unimpaired and paid for all wage loss as a result of carrier dismissing him from service without just cause.

OPINION OF BOARD: Claimant is a dining car waiter. On September 21, 1948, he reported at the crew room for service on Train No. 65. It is the contention of the Carrier that Claimant reported at the sign-out window in an unfit condition for work. He thereupon engaged in loud talk and created a disturbance in the crew room. As a result, Claimant was notified to appear for investigation on the charge of reporting for duty in an unfit condition for service and for creating a disturbance. The investigation was held, evidence taken, and discipline of dismissal from the service assessed. The Organization contends that the evidence does not sustain the action of the Carrier.

The record shows by the evidence of three crew clerks that Claimant came to the sign-out window in a condition that made him unfit for service. He was well known to all three and they immediately recognized his abnormal condition. It is true that only one of the crew clerks smelled liquor on Claimant's breath, but it is evident that they were convinced that he had been drinking. The crew clerk at the sign-out window, as a precautionary measure, directed Claimant to report immediately to the Assistant Superintendent. He did not do so and attempted to excuse his failure by saying that he desired a representative to accompany him. The record indicates that the reason for not reporting as directed was that Claimant did not want the Assistant Superintendent to see him in his then condition.

The Organization contends that the three crew clerks were not competent to judge whether Claimant was unfit for service. It will be noted that Claimant was well known to these clerks. They certainly could tell whether he appeared to be normal or otherwise. The loud and boisterous talk of the Claimant confirms their evidence as to his condition. His refusal to report to the Assistant Superintendent under the circumstances shown confirms their testimony. The evidence is ample to sustain the finding that Claimant reported in an unfit condition for work and that he did create a disturbance in the crew room on the day alleged.

This Claimant's service record shows many disciplinary measures previously assessed. We think under all the evidence that it cannot be said that the Carrier acted arbitrarily or unfairly in dismissing Claimant from the service.

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 Employees involved in this dispute are respectively carrier and employees 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.