

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

DINING CAR AND RAILROAD FOOD WORKERS UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of Kenneth Harrison, that he be returned to his former position with seniority rights unimpaired and paid for wage loss from September 15th, 1948, because of Management's arbitrary action in dismissing him from service without just cause.

OPINION OF BOARD: Claimant was a Coach Lunch Waiter whose duty it was to sell food and soft drinks to passengers on Carrier's trains enroute. The Carrier's instructions were that no merchandise was to be sold by such waiters except such as was issued by it, under penalty of dismissal from service.

On September 15, 1948, Claimant arrived at New York on Train No. 212 at 1:37 P.M. and was due to leave on Train No. 219 for Philadelphia at 3:00 P.M. During the interim he was in service.

There was evidence that when Claimant alighted from Train No. 212 at New York he had in his hands an empty Heinz juice box and also another package wrapped in half of a brown paper bag and tied with a heavy cord. After assisting a lady with a baby to the top of the stairs he returned downstairs to the train. In doing so he passed the Carrier's Instructing Chef who noted that Claimant was carrying a package that appeared to be heavy and which emitted a sound like rattling tin cans when it was jostled by the suit case of a passenger. The Chef observed the Claimant deposit the wrapped package in a refuse can. Going immediately to the refuse can the Chef found on top of the contents thereof a sealed package, wrapped in part of a paper bag. The Claimant and the package were taken directly to the office of the Supervisor of Service, where the package was opened in the Claimant's presence and found to contain 48 six-ounce cans of Old South orange juice—a brand not then being dispensed on Carrier's trains.

The Claimant said that the package that he had in his hands when he alighted from the train and which he subsequently deposited in the refuse can, after assisting the lady and child, contained only waste matter which he had gathered while on the train enroute to New York for purposes of disposal. He denied any connection with or knowledge of the package containing orange juice.

While some of the evidence was circumstantial we think it was sufficient to sustain the charge. It should also be noted that the official who heard the testimony had the witnesses before him and could observe their appearance while testifying, their candor and frankness, or the lack thereof. The Claimant has certified that the hearing was fairly conducted, and we find nothing in the record to indicate otherwise. On the showing made we cannot conclude

that the Carrier acted arbitrarily or abused the sound discretion which it was required to exercise in a matter of this character.

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 no violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.