

Award No. 4938

Docket No. DC-4728

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES**

**CHICAGO AND NORTHWESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees, Local 351, on behalf of James W. Britt, that he be returned to service with seniority accumulated and unbroken and with compensation for net wage loss suffered subject to discipline to be assessed by the Board or by Carrier on remand of claim to it for further proceedings, Carrier's disciplinary decision of dismissal being in abuse of discretion.

**OPINION OF BOARD:** On January 7, 1949, claimant was assigned as a waiter in Dining Car 6921. On arrival at Omaha, Nebraska, he was directed to remain in the dining car that night on account of the uncertainty of the train's departure time. Claimant admits a failure to comply with the instructions given and as a result was not available for service when the dining car left Omaha. An investigation was given claimant and his dismissal from the service resulted.

At the investigation claimant admitted a willful violation of his instructions to remain in the dining car and his consequent failure to protect his assignment. The only excuse offered was that he did not want to stay in the car because he had a cold, and went uptown. The Organization concedes that claimant was subject to discipline but urges that dismissal from the service was an excessive penalty.

This employe had a record of two and one-half years of service. His record was clear during this period. On the other hand, claimant willfully disobeyed the instructions of the Carrier and caused much inconvenience to the Carrier because of his failure to go out with his car. We cannot condone the conduct of this employe on the date involved. Willful and deliberate disobedience of instructions, thoroughly understood by the offending employe, cannot be lightly overlooked. On the other hand the complete severance of his employment for a first offense appears extremely harsh where his previous record is good. We think that the purposes of the penalty assessed have been fully accomplished and that claimant should be restored to service with seniority unimpaired, but without pay for time lost.

**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**

Claimant restored to service without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. TUMMON  
Acting Secretary

Dated at Chicago, Illinois this 21st day of July, 1950.