

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351  
THE NEW YORK CENTRAL RAILROAD

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 351, on the property of New York Central System, for and in behalf of Eliga Phillips, dining car waiter, that his record be cleared of the charge placed against him and that he be compensated for net wage loss suffered by him because of discipline imposed in violation of Rule 6 (a) of the Current Agreement.

**OPINION OF BOARD:** The claimant, after notice and hearing, was suspended from duty for 30 days, the Carrier having found him guilty of "attempting to defraud steward of \$11.40 representing revenue collected for service covered by check No. W 7-65-54, DC 691, Train 66, July 14, 1948." The Organization asks that the claimant be cleared of the charge and compensated for all time lost because the discipline imposed was in violation of Rule 6 (a) of the Agreement. The contention of the Organization is that the Carrier based its finding that the claimant was guilty of the charge on speculative evidence.

The evidence shows that the claimant is a dining car waiter. While en-route, Chicago to New York, he served four guests. The meal ticket was priced by the steward and returned to the table where the guests were seated. The meal check was for \$11.40. The guests departed, leaving money on the table with the check. Neither Waiter Phillips nor the steward saw them depart. Subsequently, Waiter Phillips found the money and check on the table. He placed the money in his pocket and he testified that he thought he had also placed the check there. He cleaned up the dishes from the table and continued with his other duties. During the course of these activities the claimant passed the buffet where the cash drawer was located. He further testified that soon thereafter he discovered the meal check was missing and he was in the act of looking for it when the steward presented it to him. The claimant then paid from money in his pocket the amount of the check. The steward testified that he had found the check lying in his locked cash drawer, and by experimenting, determined that it could have been slipped into the drawer when locked; and if it had been, it would fall into the position the steward found it, which was not the accustomed place for meal checks. The steward denied that he had placed it in the cash drawer. The meal check contained Waiter Phillips' station number, and the steward recognized it as one he had seen on a table at claimant's station. By Rule 41 of the Carrier, a waiter is required to deliver money received from a guest in payment of a check to the steward. The claimant never delivered the check involved in this matter to the steward, and the claimant denied having placed the check in the locked cash drawer.

The testimony is conflicting; but this Board may not set aside the judgment of the Carrier in matters of discipline unless it is clearly demonstrated that the Carrier acted capriciously. As was said in the Opinion to Award 4840: " \* \* it is not the function of this Board to weigh the evidence, for if the evidence is substantial and tends to support the charge made, the findings of the Carrier on the evidence, even though it is in conflict, will not be disturbed."

The claimant contends that the decision of the Carrier is based on speculation. We do not agree. A careful examination of the record discloses that the testimony offered in support of the charges was credible and of a character that reasonable minds could accept as true. The claimant had possession of the check just prior to it being found in the cash drawer; he had an opportunity to place it there, and no one else stood to gain by so doing. There is evidence of record, which, if believed, supports the conclusion reached by the Carrier, and we are unable to find that the Carrier acted arbitrarily or capriciously in finding the claimant guilty of the charge.

The record discloses that the hearing was held in conformity with the Scheduled Rules.

**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

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 31st day of July, 1950.