

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim Joint Council Dining Car Employees, Local 351, on behalf Waiter C. H. Randell, to be returned to service as of August 15, 1948, with seniority rights accumulated and unbroken and with compensation for net wage loss suffered as a result of unjustified and unwarranted dismissal imposed in violation of Rule 8 (a) of existing Agreement.

OPINION OF BOARD: When the claimant received notice from the Carrier that he was dismissed from his position as waiter, his Organization on his behalf requested a hearing. The Organization also requested that "all witnesses supporting charges as alleged" in the notice of dismissal be present. The hearing was held at the time set by the Carrier, and at the hearing the Carrier produced statements of a number of employees and others, none of whom were present, in support of the charges of disorderly conduct, threatening fellow employees, drinking on duty, failure to report at proper time, insubordination, interfering with the steward, and annoying passengers. None of the statements were shown the claimant prior to the hearing. If the facts set forth in the several statements are believed to be true, there was ample evidence to support six of the charges made against the claimant. Charge seven was abandoned at the hearing.

The contention of the Organization is that the claimant was not accorded a fair and impartial hearing as required by Rule 8 (a) of the Agreement because the persons who made the statements produced at the hearing were not present and available for examination by the claimant or his representative. At the hearing a request that the several statements be expunged from the record was made on behalf of the claimant. That request was denied. The record does not disclose that the claimant asked for a continuance of the hearing for the purpose of interviewing the people who made the statements or of getting statements from witnesses in his own behalf.

The issue raised here as to whether statements of witnesses not present at the hearing may be received in disciplinary proceedings has been before this Division a number of times; and the Division has decided in many cases that such statements may be received and if they contain facts worthy of belief, may form the basis for discipline. See Awards 3498, 4771 and 2770.

Rule 8 (a) of the Agreement governs disciplinary proceedings. It is to be noted that the rule requires the Carrier to furnish a statement of the

charges; but there is no requirement that the names or statements of witnesses be furnished the employe prior to the hearing. When the hearing was held, if the employe desired a continuance for the purpose of interviewing those who made the statements and of procuring evidence in his own behalf, he should have made such request; and had it been denied, there would then be a basis of charging that the Carrier was arbitrary and unfair. No such request was made here.

This same issue was before the Board in Award 4771, and the following quotation from that Opinion is pertinent here:

"The right to require the personal appearance for cross-examination of witnesses is not essential to a fair hearing."

It is to be noted that the identity of the witnesses and the nature of their statements were made known to the claimant. The denial of this information by the Carrier was the basis for Award 3288, relied on by claimant.

From an examination of the whole record we have found nothing in the facts and circumstances of this case to justify a conclusion that the hearing was unfair; or that the Carrier was arbitrary in relying upon the kind of evidence presented at the hearing; or that it abused its duty to exercise sound discretion when it dismissed the claimant from 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 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

The action of the Carrier in dismissing the claimant did not constitute a violation of 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.