

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 Joint Council Dining Car Employees, Local 351, on behalf of William F. McLinn, Porter, that his record be cleared of the charge placed against him and that he be compensated for net wage loss suffered as a result of unjustified and unwarranted discipline of suspension from service from April 15, 1946 to date that Claimant was returned to service, which suspension from service was imposed in violation of Rule 6 (a) of the Current Agreement and in abuse of Carrier's discretion.

**OPINION OF BOARD:** William F. McLinn, in whose behalf this claim was filed, is a porter and on March 7, 1946, was in service on the "Mercury" running from Detroit to Chicago. Because of incidents occurring on that trip, he was charged with selling a "hat" check. Upon a hearing, which is admitted was conducted in accordance with the rules, he was found guilty of the charge and suspended for a period of 30 days and demoted. Upon appeal, he was restored to position of porter but the suspension was not cancelled.

The theory of the Organization is that the claimant was unjustly disciplined because the Carrier did not have competent evidence upon which to base its finding of guilt.

The evidence shows that a soldier boarded the train at Battle Creek and presented to the conductor for his passage to Chicago, a reduced fare furlough ticket. This was not good on the "Mercury" and the conductor required the soldier to pay coach fare to the next stop, Kalamazoo. The soldier was told to get off at this station and get on another train where his ticket would be good. This conversation took place in the car where the claimant was serving as porter, the soldier being in the men's rest room. After the train left Kalamazoo, the conductor in the course of collecting fares, discovered the soldier in another car some distance removed from where he had been. At this time the soldier possessed a red hat check of the kind used on that day for identification of fares to Chicago. The check bore a conductor's punch, but not of the kind used at that time by the conductor or either of the other conductors assigned on that train. The conductor, knowing the soldier did not have a valid ticket for that train, inquired as to where he obtained the hat check. The soldier said he got it from the conductor. He stuck to this story until in Chicago where he was questioned by officers of the railroad. He told them that he got the hat check from a porter whom he described as "about 40 years old, weight about 200 pounds, chunky, 5 foot nine inches tall, and a scar." The claimant is of this description and has a prominent scar on his face. There was no opportunity, after the soldier said it was a porter and not the conductor from whom he had gotten the check, to confront him with the porter. The soldier was not present at the hearing.

The conductor testified that he did not turn in hat checks to the auditor; because of the heavy traffic it wasn't the practice. They were destroyed after being taken up. On this particular trip the conductor did not collect back as many hat checks as he had issued. This indicates the possibility that hat checks may, from time to time, come into the possession of persons not entitled to them or they may be lost.

The claimant denied that he had sold the hat check to the soldier and did not know how it came into his possession.

On this state of facts the Carrier had to determine that one of two conflicting stories of the soldier, who was not present as a witness, was true.

The rule followed by this Division, and it has been stated many times, is that it is not the function of the Board to weigh the evidence, and resolve conflicts in the testimony; and the Board has not rejected decisions of a Carrier unless it could be said that its conclusions were arbitrary. Based solely upon the record of this case, we believe that when the Carrier adopted that part of the soldier's statement that he got the hat check from the porter, and rejected the soldier's statement that he got it from a conductor, and excluded the possibility that the soldier could have gotten it from some other source, that its action in so doing was arbitrary. The evidence lacks the weight and credibility that reasonable minds could accept as forming the basis for the decision reached by the Carrier. See Award 4427. We therefore conclude that when it suspended the claimant on such evidence, it failed to exercise that sound discretion which is its duty to display in matters of discipline.

**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 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

The Carrier violated Rule 6 (a) of the Agreement.

#### AWARD

Claim sustained.

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.