Award No. 5828

Docket No. DC-5837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: *Claim of Joint Council Dining Car Employes, Local 370, for and on behalf of Richard D. Maurice, that he be compensated for time loss and for monies expended in traveling to and from a hearing as ordered by the carrier.*

EMPLOYES' STATEMENT OF FACTS: Richard D. Maurice, employed by the carrier as a waiter, was on September 1, 1950, notified to appear in Detroit, Michigan on September 12, 1950 for a hearing as is shown by Exhibit I, attached hereto and made a part hereof. It also appears that Claimant, Richard D. Maurice, resides in New York City, it further appears that the carrier made no provision for transportation for the claimant. The hearing concerned a complaint lodged against the claimant by one of the carrier's patrons.

On the day in question the claimant appeared and a hearing was held. On September 20, 1950 claimant was informed that no disciplinary action would be taken against him by the Carrier, Exhibit II, attached hereto and incorporated herein by reference.

Thereafter the claimant submitted to the carrier a time sheet and a receipt for transportation, that the time consumed and transportation paid for amounted to $35.91.

That Rule 16(a) of the Current Agreement reads as follows:

> "(a) Employes shall not be disciplined, suspended (except pending investigation) or dismissed without a fair and impartial trial. Investigation shall be held as promptly as possible, the employes being notified in advance of the nature of the charge and the time of investigation. Witnesses will be examined separately, but in the event of conflicting testimony, those whose evidence conflicts will be examined together. When discipline assessed is actual suspension, time lost attending investigation shall be applied against the actual suspension time."

Rule 16 (c) of the agreement reads as follows:

> "(c) Any employe disciplined, suspended or dismissed, who after the above procedure has been followed is found blameless, or whose discipline is modified, shall be reinstated without loss of

the part of the complaining passenger, carrier felt that, if possible, claimant should have the opportunity he requested. Since Mrs. Lacy resided at Detroit, Michigan, this could be accomplished only by scheduling the hearing at that city, a distance of some 687 miles from New York City which is claimant's home terminal.

2. **Under no rule of the agreement is claimant entitled to be compensated for time spent in traveling to and from the hearing or reimbursed for expenses incurred in this connection.**

Claimant was not instructed to appear at the hearing as a witness. His position was that of a defendant charged with a specific offense. He was not suspended by carrier prior or subsequent to the hearing. Under these circumstances, claimant is entitled under no rule of the agreement to the time or expenses claimed.

3. **In accordance with principle established in all awards of the *Third Division, National Railroad Adjustment Board, since* Award 3343, this claim should be denied.**

In a number of recent decisions the Third Division of the National Railroad Adjustment Board has dealt with claim submitted on behalf of employes requesting payment for time spent attending hearings, including time in traveling to and from the site of the hearing. The following principle expressed by Referee Robert G. Simmons in Award No. 3478 dated March 17, 1947 has been consistently adhered to since that time:

> "We are of the opinion that the decision should turn upon whether or not there was mutuality of interest in the investigation; i. e., did the employe required to attend have a direct concern in the matter being investigated or did he attend merely as a witness?"

This principle was restated by Referee Thomas C. Begley sitting with this Division in Award No. 5010, August 4, 1950. See also Awards 3462, 3722, 3911, 3912, 3966, 3968, 4570, 4573 and 4911.

CONCLUSION

For the reasons set forth in the foregoing, carrier respectfully urges that the claim of the employes in this matter is without merit and should be denied.

All the facts and arguments herein presented were made known to the employes during the handling of the case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim by a dining car waiter that he be compensated for time loss and for monies expended in traveling to and from a hearing. The reason for the hearing was to determine if the claimant had failed to return change from a twenty dollar bill to a passenger on Train 17, August 23, 1950.

The claimant expressed his desire to confront the complaining passenger and the Carrier complied by setting the hearing in Detroit, the home of the passenger. The hearing was held in Detroit on September 12, 1950.

On September 20, 1950, the Carrier's Superintendent of Personnel wrote to the claimant, in which letter was said "While I am not satisfied you are blameless in this matter, in view of the conflicting evidence and other cir-

cumstances surrounding this incident, I have decided that no disciplinary action will be taken."

The claim is based on Rule 6 of the existing Agreement and the pertinent part of Rule 6, in our opinion, is that portion of Rule 6 (c) which states "If found blameless and unless otherwise agreed upon, such employe shall be compensated for his net loss of wages".

In arriving at our opinion as to the proper disposition of this claim, we do not attempt to weigh the evidence and testimony of the hearing. We are concerned with the decision reached after the hearing and what is its effect.

It appears to us, after studying the language of Mr. Austin's decision that the claimant was not found to be guilty. Mr. Austin wrote that he was not satisfied that the claimant was blameless. That language indicates to us that the Carrier was uncertain as to what actually had taken place and that the evidence at the hearing was not sufficient to convince Mr. Austin of the claimant's guilt or innocence. The over all effect of this letter was that the Carrier did not find the claimant guilty of "Failure to return change from $20.00 bill to passenger, Train 17, August 23, 1950".

In applying Rule 6(c) to this situation, we determine that the claimant should be entitled to his net loss of wages. The Agreement is not so broad as to make mandatory the payment for monies expended by the claimant.

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

That the Agreement was violated by the Carrier.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois this 26th day of June, 1952.