

**Award No. 5861**

**Docket No. DC-5891**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Paul G. Jasper, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370**

**THE NEW YORK CENTRAL RAILROAD**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 370 on the property of the New York Central System for and on behalf of Thomas Kirkland, that the suspension from service for 30 days from September 5, 1950 of Thomas Kirkland be removed and that all loss of seniority and vacation rights be restored and claimant be compensated for all loss of pay incurred by the suspension.

**OPINION OF BOARD:** This is a discipline case. Claimant was bartender on Train 50 in charge of Tavern Car "Grover Cleveland" on the night of August 3, 1950. Two investigators were assigned to check, among other things, conduct of employees on the train of claimant. They were known as operators 4070 and 2666. Coming into the tavern car together they purchased over a two-hour period and prior to going to dinner six Old Fashioneds for operator 2666 and two beers for operator 4070. These drinks were on one check. The operators in filing a joint report stated they were overcharged, paying by claimant's request the sum of \$7.60 instead of the correct sum of \$5.90. Further stating each time a drink was served to them, the claimant did not issue a new check but picked up the old—pretended to write on it, but did no writing. That when they requested the amount of the bill, the claimant picked it up and said \$7.60 which operator 2666 paid, giving a 75¢ tip. The claimant did not show them the total bill.

The claimant was later notified that a hearing would be held involving his conduct in:

- "1. Overcharging guest, Train 50, August 3, 1950.
2. Failing to enter drinks on check before serving same, Train 50, August 3, 1950; this in violation of Rule 45.
3. Failing to present check to guest when making collection for drinks served, Train 50, August 3, 1950; in violation of Rule 45 and special bulletin dated June 16, 1950."

After hearing claimant was found guilty of charges numbered 1 and 3 and suspended for 30 days, effective from September 5, 1950.

Prior to the hearing operator 2666 died.

The claimant in his original submission questioned the fairness of the hearing for the reason that operator 2666 bought the drinks, paid the bill,

and tip, and should have authored the report which was unidentified as to the author. The evidence reveals, however, that this was a joint inspection by the two operators and a joint report was made, signed by their numbers. The facts further show that Hanks was present in the tavern car, saw, and heard the complete transaction. He was present at the hearing, identified the joint report, his operators' numbers and testified to the facts. The record discloses the claimant received a fair and impartial hearing.

In examining the record we find that there is substantial evidence of probative value to sustain both counts one and three.

The facts are reported by the inspectors and as testified to by Hanks were denied by the claimant. Conflicting evidence and the credibility of witnesses is for the determination of the hearing member.

The claimant maintains the Company received all monies owing to it. This is true and the claimant was not charged with withholding funds from the Company. The facts are that the claimant overcharged the two men for their drinks the sum of \$1.70 and did not submit to them for their inspection the totaled check as he was required to do.

Discipline was imposed by suspending claimant for 30 days. After reviewing all the facts, we must conclude that the discipline given was not unreasonable, arbitrary or capricious.

**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

The claimant has failed to sustain his claim.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 18th day of July, 1952.