

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**UNION PACIFIC RAILROAD COMPANY
(Northwestern District)**

STATEMENT OF CLAIM: Request for reinstatement to service of E. S. Zarick, Dining Car Steward, Union Pacific Railroad, Northwestern District, with payment for all time lost, seniority, pass and vacation rights unimpaired, account dismissed from service, November 3, 1951, for alleged violation of certain Transportation Rules and Dining Car Service Rules, September 4th and 12th, respectively, 1951.

OPINION OF BOARD: The Brotherhood requests that Carrier be required to reinstate in its service, with seniority, pass and vacation rights unimpaired, Dining Car Steward E. S. Zarick and to pay him for all time lost since his dismissal from its service on November 3, 1951.

By letter dated October 19, 1951, Carrier charged Claimant with violation of Rules 701, 2509 and 2517 of its "Rules and Instructions of the Dining Car and Hotel Department" effective March 1, 1943. These violations were therein set forth as "discourteous treatment toward Mr. R. A. Connery, Pullman Conductor, and getting into a verbal altercation with him, in which you used boisterous and profane language, in Dining Car 3614, Tr. 11, evening of September 4th, 1951," and "discourteous conduct toward a passenger, Miss Lillian M. Pickett of Oskaloosa, Iowa, in Dining Car 3682, Tr. 12, into Cheyenne, Wyo., evening of Sept. 12th, 1951, and lack of self control and restraint, as well as tact and diplomacy, and also lack of effort to please a patron of the company."

As provided in this letter, which was mailed to and received by Claimant, hearing was held on October 26, 1951. By letter dated November 3, 1951, Carrier notified Claimant that it found the charges made against him had been sustained by the evidence adduced at the hearing and advised him he was discharged from its services.

The first contention made by the Brotherhood is that Carrier violated the following provision of Rule 31(b) of the parties effective Agreement, to wit: "Hearing shall be held within ten days from the date the employee is charged with the offense." Claimant contends he was called into the Superintendent's office on September 15, 1951, there charged with discourteous treatment of Pullman Conductor R. A. Connery and required to make a written statement in connection therewith, and that hearing was not held thereon until October 26, 1951. If true, this would be contrary to the above provision.

However, the record shows no "precise charge" of the offenses was made against Claimant within the contemplation of Rule 31(b) until October 19, 1951, when the charges hereinbefore set forth were made. What was being done by the Superintendent on September 15, 1951, was to investigate what had occurred to see if charges should be filed. Such investigation does not constitute the charging of an employee with an offense within the contemplation of the provisions of Rule 31(b). The provisions of this rule contemplate that written charges setting out the offense will be made against and served upon the employee a reasonable time prior to a hearing thereon, but not to exceed ten days. We find no merit in this contention.

It is next contended that the letter written by Miss Lillian M. Pickett should not have been received and considered by the Carrier in determining his guilt or innocence of the charges made because the author thereof was not present at the hearing and consequently neither the Claimant, nor his representative, had an opportunity of interrogating her. There is nothing in the parties effective Agreement which sets out the type of evidence which may or shall be adduced. This Division has many times correctly ruled that under such circumstances no obligation rests on the Carrier to produce the author of a letter or statement at the hearing. Such absence may and should be considered in determining the weight to be given thereto but in no way affects the admissibility thereof.

It is also contended that Carrier should have made available at the hearing all the Waiters who were in Dining Car 3614 when the incident occurred involving Claimant and Pullman Conductor R. A. Connery. If Carrier adduces sufficient evidence to fully determine the facts that is all that is required of it. If Claimant desires to question any witness the Carrier has not produced the burden rests upon him to call them, as the rules of the parties' Agreement provides he may.

As to what occurred on September 4, 1951, when Claimant was the Steward on Dining Car 3614, the statement and testimony of Pullman Conductor R. A. Cannery and the testimony of Chef Dupoy fully sustain the Carrier's finding that Claimant was guilty of the charges made against him relating thereto. As to the incident of September 12, 1951, when Claimant was the Steward on Dining Car 3682, we think the evidence establishes nothing more than that of a complaining patron who was dissatisfied with the food she was served and who became more so when she discovered that she had made a mistake as to the price thereof. We do not think there is any evidence that establishes Claimant was guilty of the charges made against him in regard thereto.

Was the penalty of dismissal arbitrary and therefore unwarranted? Claimant entered the services of the Carrier on September 14, 1946, as an Assistant Steward. Since September 28, 1946, and up until his dismissal on November 3, 1951, he served the Carrier on various assignments as a Steward. The proper relationship between employees, especially those working on the same passenger train, is very important in Carrier's work of serving the traveling public. The record shows Claimant indulged in a very flagrant abuse thereof. Certainly Carrier, in order to maintain this proper relationship, has the right to discipline its employees when, by proper procedure, it has determined they are guilty of abusing it. Under the circumstances here shown we think Carrier was justified in dismissing Claimant and that its action in doing so was neither arbitrary nor unwarranted.

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

That Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.