

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351
THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, on the property of the new York Central Railroad Company for and on behalf of L. Covington, that the disciplinary action heretofore imposed upon him on or about June 20, 1951, by the Carrier, be vacated and set aside and declared for naught. That his seniority and vacation be declared unimpaired and he be compensated for all time loss.

OPINION OF BOARD: This dispute concerns the propriety of a suspension, without pay, for a period of ten days imposed upon the Claimant, one L. Covington, a parlor car porter. Request is made that this disciplinary action be rescinded and held for naught, and that Claimant be compensated for all time lost and that his seniority and vacation be declared unimpaired.

The suspension imposed arose out of Claimant's alleged guilt of insubordination to a dining inspector, J. Tokarz. Under date of May 29, 1951, Claimant was notified in writing to report for hearing on the charges brought, said hearing to be held on June 12, 1951. At the request of Claimant's representative, the hearing was postponed until June 19, 1951. On June 20, 1951, Claimant was formally advised of his suspension as above noted.

The initial charge, and subsequent discipline of suspension for a period of ten days, arose out of the placement of, or refusal by the Claimant to permit the placement of, a traveling bag belonging to a dining car inspector in the baggage rack.

It is so well established by Awards of this Division as to preclude necessity for their citation, that it is not the function of this Board to resolve conflicts of evidence in the record. We will not do so here. While the record contains several conflicts there exists a sufficient amount of substantial evidence upon which an adjudication of the issue involved may be based.

The Organization maintains that a fair and impartial hearing was not granted Claimant and that the evidence presented thereat could not properly be said to justify the imposition of discipline.

We cannot accept the content of the Organization that the Claimant did not receive a fair and impartial hearing. The hearing was postponed for a period of one week, at request of Claimant's representative, in order that Conductor McRitchie might be present to testify in Claimant's behalf.

In addition, the representative of the Claimant not only was given ample opportunity to present testimony, but conducted what was, to say the least, an exhaustive cross-examination of the witness appearing for the Respondent.

It is argued that the testimony of Conductor McRitchie exonerates Claimant of the charge of insubordination. While it is true that the Conductor's testimony was most favorable to the Claimant, it is likewise true that he was present only a portion of the elapsed time during which the events we are here concerned with occurred.

It is the opinion that the testimony of Inspector Tokarz is corroborated sufficiently by admissions of the Claimant and there exists here substantial evidence of a probative value to justify the penalty imposed.

The Board is of the opinion and so finds and holds that Claimant received a fair and impartial hearing and that the penalty was fully warranted and that the degree thereof was neither excessive or unreasonable.

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 Employee 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

That the facts and circumstances of record will not justify this Board in vacating the action taken by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.