

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370

**THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Joint Council Dining Car Employees, Local 370 for and on behalf of Samuel N. Davis on the property of the New York, New Haven and Hartford Railroad Company, that he be restored to service with all seniority and vacation rights unimpaired and payment for all time lost.

OPINION OF BOARD: This is a discipline case in which a waiter was dismissed from further service with the Carrier after the hearing on the complaint against him had been had. The Organization makes claim in his behalf as above noted.

He was charged with:

1. Insolence to a hostess and steward.
2. Insolence to a supervisor.
3. Refusal to obey instructions.
4. Insubordination.
5. His past record.

No good purpose would be served by an attempt to reconcile the conflict of testimony in this record. What we need to do is to sift it all to see if there is enough competent and substantial evidence to sustain the action of the Carrier in upholding the charges.

The alleged acts of insolence and insubordination took place on the Carrier's "Advance Merchants Limited" running between Boston and New York on June 19, 1952. The train leaves Boston at 4:55 and runs non-stop to New York during which the height of the dinner hour occurs.

We find little or no support of the charges of insolence to the hostess and the supervisor. But assuming there was a tinge of insolence in the "tone of his voice" (the words spoken to the two women were not insolent per se), there was some justification for it. The hostess had removed the ash tray from one of the waiter's tables and he asked her where it was. He says her answer was "I ate it". Of course, she denies saying that but she never did say what she did with the ash tray or who found it. In other words, there was some basis for his becoming irritated when she had disturbed his table setting.

As to the insolence toward the Assistant Supervisor, it is difficult for us to understand why she had to choose the height of the dinner hour as the time to attempt to question him about his conduct. He was trying to serve eight people at the time she first spoke to him, and the other waiters were just as busy. Again it was not what he said, but his tone of voice that she complained of. He says she shouted at him, too. It appears that part of her conversation with him took place after the dinner hour. We think there would have been no "insolence" had she waited until that time to speak to him at all.

As to the refusal to obey orders, insolence and insubordination to the steward, we have a different situation. This started in the middle of the afternoon when the steward asked him to polish the glasses. This request was made three times, and his responses became more insolent each time, and he never did comply.

This refusal and insolence to the steward might not of itself justify the discipline of dismissal, but when coupled with his past record, we think it not unjust, because his record for the last ten years shows eighteen occasions for discipline, some of them serious enough in themselves to justify dismissal.

His representative acknowledged at the end of the hearing that it had been fair and impartial, and there is no showing that any of the procedural steps were not complied with, so under all the circumstances we find no occasion for disturbing the action of the Carrier in this case.

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 Carrier did not violate its Agreement with the employee involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.