

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim for and on behalf of Jesse Howard, waiter on the property of the Soo Line Railroad Company filed by the Joint Council Dining Car Employees—Local 516, that Jesse Howard be returned to service with his seniority and vacation rights accumulated and unimpaired, and that he be paid for all time loss.

OPINION OF BOARD: Claimant was dismissed for failure to report for an assignment.

At the hearing the fact of the assignment was admitted by all hands, but there was some conflict in the evidence on the question whether the assignment was final or whether it was subject to confirmation by telephone call.

The decision was to dismiss Claimant from service and the letter of dismissal stated:

"Before this decision was reached, your personal record and your police record were reviewed."

From this decision the General Chairman appealed as follows:

"The charge as brought by Mr. Christensen that Mr. Howard missed his assigned run is substantially correct, but we make this appeal to you on the basis that the punishment meted out was much too severe for the offense as charged.

"To dismiss a man from the service for missing an assigned run when there was probably some question as to the instructions given by the sign-out man is indeed dealing out to Mr. Howard the extreme penalty under the circumstances.

"We feel that Mr. Howard's penalty should be somewhat less than actual dismissal from the service. We appeal to you at this time that you will reduce said penalty so that it will be more in conformity to the charge as made by the Superintendent of Dining Cars."

First. It is not our function to resolve conflicts of evidence and there was ample evidence to support the conclusion that Claimant failed to report

for a firm assignment. Moreover, in view of the restricted ground upon which the appeal was based, the only question properly before us is the propriety of the measure of discipline imposed (Awards 112, 2095, 2099, 5077 and 5501).

Second. Upon the entire record we are unable to conclude that Claimant was denied a fair and impartial hearing or that his dismissal constituted an abuse of discretion on the part of the Carrier.

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

The Carrier's action should be allowed to stand.

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 June, 1954.