

Award No. 7467

Docket No. DC-7414

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

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

STATEMENT OF CLAIM: Request that Gerald F. Mitchell be restored to service as Dining Car Steward with seniority unimpaired and with pay for time lost.

OPINION OF BOARD: This is a claim for and on behalf of a discharged Dining Car Steward requesting that he be restored to service with seniority unimpaired and with pay for time lost.

First we shall look to the record to see if there was substantial compliance with Rule 13 (a) (b) for investigation, hearing and decision in connection with handling the dispute on the property. The rule is plain and simply stated. The hearing for which provision is made is not a trial and was never intended as such when the rule was negotiated but our awards in great numbers would tend to surround the hearing with all the snares of due process. Thus, we have placed tools in the hands of persons who find themselves at disadvantage and lacking in some of the skill required for use of the tools provided, leaving the real issue that is in dispute frequently under a cloud of alleged procedural defects in the record by which it is hoped that one who should be disciplined will escape all the consequences of his wrong doing.

Such a record as that above mentioned is before the Board in this docket. The rule at issue, in our opinion, provides for investigation and hearing on the property as protection against precipitate, arbitrary, discriminatory, and capricious action that could deprive one of the security and tenure of employment that other rules afford, and, where the decision invokes discharge as the measure of discipline, the real question before us for review is whether the discharge was for just cause within the meaning of the rule.

We find no reason to say that the Board should not now review the record for the just cause necessary to sustain discharge, account contentions raised and argued that the investigation was not fairly and impartially conducted.

The cause assigned for discharge is that the Steward was guilty of irregularities in the operation of the dining car and in the handling of Company money. As to the operation of the dining car the general charge particularly concerns the Steward's admitted possession of a small quantity

of liquor which he states he received as a gratuity from patrons. The other aspect of the charge is concerned with allegedly excessive food cost rations, tardy remittances, and liquidating debit charges.

Despite what the charges might imply, it is important to know that the Steward is not accused of having engaged in unauthorized sale of liquor, nor is he charged with having misappropriated Carrier's property.

We do not fully credit the Steward's explanation about the liquor, but in view of the Carrier having conceded that unauthorized or illegal sale of liquor is not the accusation under investigation, we are not privileged to draw inferences that are at variance with what is assigned as just cause for discharge.

On the other hand, we see in the record some evidence of guilty knowledge on the Steward's part that there is cause for dissatisfaction on the part of Carrier officials with the operation of his dining car.

Fortunately for the Steward in this case we have to take the record as we find it and that record is not sufficient for upholding the supreme penalty of discharge. We shall award him reinstatement with seniority unimpaired, but without pay for time lost.

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 the Agreement was violated in accordance with the Opinion.

AWARD

Claim disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1956.