

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY (Lines East)**

STATEMENT OF CLAIM: Joint Council Dining Car Employees Local 385 for and on behalf of William D. Massie, Buffet Car Attendant, that his historical record which has been marked as follows:

“Responsible as attendant on Train 16, February 24, 1954 for preparation and service of beverages without guest checks to cover.

“Responsible for charge that no receipts were given to patrons for a beverage prepared by you and served on the car of this date and that receipts were not issued for other service performed on the car of that date.

“Responsible for charge that due to improper handling of checks and improper supervision by you as attendant on train 16 February 24, 1954 the Carrier was deprived of certain revenues to which it is rightfully entitled.”

be freed of all reference to the above quoted disciplinary writing; that his historical record be restored to its original state of existence prior to the above quoted disciplinary entries.

OPINION OF BOARD: This matter concerns the request of Claimant that the above quoted disciplinary notations be stricken from his personnel history.

The Organization took the position that the investigations upon which the said improper entries on Claimant's record were predicated was not conducted in a fair and impartial manner in that the evidence presented against Claimant was in the form of Statements of, and by Operatives who did not appear at this hearing. It was asserted that Claimant should have been permitted to confront and cross-examine his accusers and that in failing to make such witnesses personally available Claimant was denied his rights under the investigation rule of the effective agreement. The Organization further pointed out that Claimant was in fact found guilty of mishandling of service checks which were never in his possession and which were the responsibility of another employee; and further that in furnishing a glass, ice and water to a passenger without charge, with which to make a beverage, the basic in-

gradient of which did not stock, was only maintaining a standard of passenger service expected of him.

The Respondent took the position that evidence adduced at the investigation justified the discipline imposed, namely, a record of facts disclosed in Claimant's personnel folder was not unreasonable discipline. It was asserted that the use of investigators reports to establish the Claimant's dereliction of duty was proper, and that this Board would in the instant case not be justified in substituting its judgment for that of this Carrier.

There was no departure from the procedural requirements in connection with the conduct of the investigation. We cannot agree with the Organization that the reports of the operatives should not be considered; and that their (operatives) absence from the hearing was improper.

This Board has held in many past decisions that the use of investigators is necessary, also, that under investigation rules similar to the confronting one, there exists no prohibition as to the use of investigators reports and that their presence at this hearing is not mandatory.

On the basis of this record as a whole, including the admission of Claimant that he rendered some services without charge, we conclude that there exists substantial evidence that justifies the placing of a Statement of the facts adduced in Claimant's record. This being true this claim is without merit.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.