

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Joint Council Dining Car Employees Local 351 on the property of the Illinois Central Railroad for and on behalf of Harvey Jones, second cook; that he be reinstated to his former position with seniority and vacation rights returned unimpaired and that he receive compensation for all time loss as of March 27, 1954.

OPINION OF BOARD: The confronting dispute concerns one Harvey Jones who seeks reinstatement to his position with all seniority, vacation and other contractual rights unimpaired, together with compensation for all time lost.

Claimant was notified on March 19, 1954 to appear on March 23, 1954 to answer charges concerning alleged violation of Rule 5 of the "General Rules for the Guidance of all Employees of the Dining Service Department," said rule providing:

"Assignment of wages or the garnishment of wages resulting in legal action against the company may be cause for dismissal of employe involved."

Claimant was notified on March 27, 1954 that he had been found guilty as charged and stood dismissed from service.

The Organization took the position that this dismissal was arbitrary and unjust for the reason that the wage assignments and garnishments in question did not "result in legal action against the company" as required by Rule 5, inasmuch as no suit was actually instituted in a court of law against the Respondent. It was further argued that the discipline invoked was both capricious, excessive and unreasonable.

The Respondent asserted that Rule 5, above quoted, is a reasonable rule, and that while the mere execution of a wage assignment could be considered a violation of this rule, the resultant garnishment with notice thereof served upon the Carrier most certainly was legal action. It was pointed out that Claimant admitted all facts upon which his discharge was based; that such action, that is Claimant's discharge, was warranted and that this Board should not substitute its judgment for that of the Carrier.

The record is clear that Claimant was aware of the rule here involved. He admitted execution of the wage assignments. Likewise the record is

clear that the Respondent was served with both the Assignments and the Notice of Garnishment. Thus we come to the question as to whether or not this action constituted, "resulting in legal action against the company" within the meaning of Rule 5.

We think that it did. The Statutes of the State of Illinois as they pertain to wage assignments and garnishments are contained in the record. Such Statutes require that wage assignments, executed by an employe, be served upon an employer together with a demand or notice to withhold sums up to the statutory maximum of 25% of monies then due the Employe, as a necessary prerequisite to the institution of suit by one in whose favor an assignment is made within the prescribed 30 day period contained in the Statute. We are of the opinion that service of these instruments upon the Respondent constitutes the "legal action" contemplated in the Rule.

This Board has many times held that disciplinary action will not be rescinded or modified if (1) the investigation rules of the effective agreement have been complied with (2) the action taken was neither arbitrary or capricious, or (3) the penalty invoked is excessive or unreasonable. Here the investigation rules were complied with and the existence of substantial evidence of guilt, including admissions by Claimant will not sustain a finding of arbitrary or capricious action on the part of the Respondent. Likewise evidence of prior reprimands and suspensions imposed upon Claimant for like derelictions preclude a finding or holding that the penalty imposed was, in the premises, 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 employes involved in this dispute are respectively carrier and employes 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.