

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Local 385 on the property of the Chicago Milwaukee St. Paul & Pacific Railroad Company for and on behalf of James Toney; that the restrictions as to assignments be removed and declared for naught and that James Toney be restored to service and be permitted to render service as a waiter, unimpaired.

OPINION OF BOARD: Claim here concerns one James Toney. Request is made he be restored to service as a waiter without restriction as to the type of service he is allowed to perform.

The Organization asserts that Claimant has been improperly restricted as to the type of service he can perform. It was contended that all evidence upon which the Carrier based its decision was speculative in nature and required assumptions that are not to be supported by the record, particularly in view of the fact that no one actually saw the passenger tender a bill of the alleged denomination to claimant. It was pointed out that Carrier representatives refused to accept Claimant's offer to submit to a personal search; that no complaint was made to Claimant or anyone else concerning the alleged "short change" until such complaint was in effect solicited by Carrier's representative.

The Respondent took the position that the charge against Claimant was fully supported by the record, and that the penalty imposed, that is, restricted service for Claimant, was warranted for the future protection of the employer and traveling public alike. It was contended that the statements of the two passengers concerned clearly indicated that Claimant did not return the proper amount of change when service was completed, for which reason the penalty imposed should not be disturbed.

The record in this case indicates that Claimant was given a fair hearing. The statements and testimony of the Respondent's representatives, namely those of Mr. Ayars, Superintendent of the Dining Car Department, and Mr. Jones, Special Representative, are inconclusive, and standing alone, would not support a finding of guilt. However, the statements of the passengers involved contain what we believe to be substantial evidence of wrongdoing on the part of Claimant.

The Organization complains that these individuals were not present, thus no opportunity of cross-examination was afforded. This Board, in many prior decisions has held that the use of statements in an investigation does not prejudice the rights of employes charged with dereliction of duty. Likewise the Board has held that a disciplinary action will not be disturbed if (1) Claimant is given hearing in accordance with the procedural requirements of the investigation rule (2) substantial evidence is adduced, indicating that Claimant is guilty as charged (3) the penalty imposed is not excessive or unreasonable.

We here reiterate our adherence to these doctrines. Having found that there exists substantial evidence of Claimant's guilt, we are likewise of the opinion that the penalty imposed was neither excessive or unreasonable, so therefore, the same will not be disturbed.

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.