

Award No. 7907
Docket No. DC-7386

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Joint Council Dining Car Employees, Local 516 on the property of the Northern Pacific Railway Company for and on behalf of T. A. Lewis, that he be paid for all time lost, restored to service with all seniority and vacation rights unimpaired as a result of an incident allegedly to have occurred on August 21, 1954 on Diner 450, Train 26.

OPINION OF BOARD: This is a discipline case. Claimant here seeks revocation of a 30 day suspension, with pay for time lost during such period and seniority and vacation rights unimpaired.

Claimant was charged with violation of printed instructions on Menus, and Rule 701, and (b) of the Operating Rules and General Instructions. The essence of the charges concern the alleged service of two orders of Ice Cream and an order of Strawberry Shortcake on verbal order, as well as failure to present check to guest when payment for food was made.

The Organization asserts that Claimant did not receive a fair and impartial hearing within the meaning of Rule 16 for the reason that all parties interested in the proceedings were not notified to be present; thus precluding Claimant and his designated representative the privilege of being confronted by his accusers.

The Respondent took the position that the Organization was attempting to place a strained construction upon the rule for the reason that even though individuals might be "interested parties" within the meaning of the rule, it (Carrier) has no power to enforce attendance at an investigation. It was asserted that this Board has held in many cases that it is not necessary to produce the writer of a letter or statement at an investigation. It was further pointed out that an opportunity to meet the operatives, who made the reports relied upon, was presented to both the Claimant and General Chairman on several occasions but that a refusal of this offer was the end result.

We are of the opinion that the record including the statements of operatives indicate substantial evidence of the guilt of Claimant. It is likewise noted that no serious question as to Claimant's guilt is raised by the Organization.

Thus we are confronted with the question of whether or not the Carrier's failure to formally notify the operatives who made the report, of the time and

place of hearing, and request their presence thereat, invalidated the investigation proceedings.

We have reviewed the many cases cited holding that no obligation rests upon a Carrier to produce the author of a statement at an investigation, where, as here, the agreement sets no criteria as to the type of evidence which shall or may be adduced.

While we here reaffirm our acceptance of and adherence to, these lines of precedents it is noted that in no instance did the investigation rule contain and express or implied requirement that formal notice be given to "all parties interested."

If the verbiage of the Rule is to be given a single, literal meaning the position of the Organization is well taken. If, on the other hand the intent and purpose thereof is to assure the Claimant and the Organization that only after due notice to them will an investigation be held, the Respondent's contentions are correct.

The confronting agreement was negotiated in 1950. Neither parties thereto are novices in negotiating provisions of a collective agreement. While the Rule here is susceptible to alternate meanings we are of the opinion that the intention of the parties was to guarantee to an employe and the Organization that due notice would be given prior to hearing and the imposition of discipline.

It is further noted that both Claimant and the Organization refused an offer of a meeting to meet with the operatives who made the reports. In making this offer the Respondent was mindful of Claimants rights to a fair and impartial hearing. The refusal of such offer leaves no ground for further complaint in this particular case.

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 Carrier did not violate the effective agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1957.