

Award No. 7921
Docket No. DC-7691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Carrier violated Rules 2, 22, and 23, also Rule 45 of their Manual of Instructions, when they dismissed Waiter Walker from service.

Carrier be required to re-instate Waiter Walker to service, with all rights unimpaired and paid for all monetary loss.

OPINION OF BOARD: This is a discipline case. It involves one C. H. Walker, a Waiter who was discharged after an investigation held on February 9, 1954. Request is made that this discharge be set aside and that Claimant be restored to service with all contractual rights unimpaired with pay for all time lost.

The Organization asserts that the discharge of Claimant was arbitrary, capricious and discriminatory in view of the fact that Rules 2, 22, 23 of the Agreement as well as rules of the Manual of Instructions. It was pointed out that charges were filed here only after Claimant filed a claim for time spent in reporting for duty, therein requesting information concerning the meaning and proper application of Rules and Instructions relative to reporting. It was further pointed out that Claimant was subjected to improper discipline without hearing, when on two occasions he was prevented from fulfilling his assignment.

The Respondent took the position that Claimant was clearly guilty of failing to comply with instructions as to reporting for duty, as well as failing to inform his superiors daily prior to the time designated, that he would fill his assignment. It was asserted that Claimant was given a fair and impartial hearing in full and strict compliance with the investigation rule, and that the penalty imposed was not excessive in view of Claimant's past record, for which reason this Board should not substitute its judgment for that of the Carrier.

While the Carrier's Supervisor's handling of the various occurrences that led up to the investigation here might well be subject to criticism and while it is apparent that in requiring Claimant to notify Carrier prior to a specified time, of his intention to protect his assignment, the Respondent was not applying, or attempting to apply instructions to all employes on a non-discriminatory basis, we must of necessity conclude that Claimant was guilty

of failing to obey instructions. Whether or not such instructions were contrary to the cited rules is not controlling here. Said instructions, standing alone, were not unreasonable. It is incumbent upon an employe, at all times, except in the face of apparent physical danger, to comply with all instructions. If by so doing an employe has reason to believe that any rule was violated, he may file a claim.

It being apparent that the procedural requirements of the Investigation Rule were complied with, having found that substantial evidence of guilt, including Claimant's admissions as to late reporting for duty was adduced at the hearing, we turn to the question of whether or not the penalty imposed here was, in the premises, excessive or unreasonable. Ordinarily the penalty of discharge on the facts of record here would be both unreasonable and excessive, but here Claimant has been the subject of prior disciplinary measures. One of these included discharge, followed by reinstatement, without pay, by this Board in Award 5366. For this reason we conclude that further corrective discipline would be useless, for as we stated in Award 3568:

"* * * The judgment of this Board in restoring this Claimant to service * * * has not been substantiated by the subsequent conduct of this employe. The Carrier had sufficient evidence before it to sustain the penalty imposed. The employe has forfeited any claim she may have had for leniency at the hands of this Board." * * *

For the reasons stated this disciplinary action 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 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 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 23rd day of May, 1957.