

Award No. 7923

Docket No. DC-8326

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 848

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 848 on the property of the Chicago, Burlington and Quincy Railroad Company, for and on behalf of Daniel Strawhorn, waiter, that he be reinstated with his seniority rights unimpaired and compensated for wages lost as of August 30, 1955 having been on that date relieved from assignment Trains 21-24 and having been unjustly disciplined and dismissed from service, and that said compensation for wages lost be paid less any amount earned during period of dismissal.

OPINION OF BOARD: This is a discipline matter. It involves one Daniel Strawhorn, a waiter and concerns the request that the penalty imposed be rescinded and that reimbursement be made for all wage loss as contemplated by Rule 26 (a).

Petitioners assert that evidence of record fails to indicate the truth of the charges brought against Claimant and upon which the Carrier imposed the discipline in question. It was pointed out that the identification of Claimant was inconclusive as was the evidence of taking of verbal orders and the mishandling of checks, and that there was here present a clear case of entrapment. It further asserted that the presence of the two operatives, upon whose reports the investigation were predicated, were improperly permitted to remain in the hearing room when they themselves were not testifying, with the result that Claimant was not afforded a fair and impartial hearing.

The Respondent asserts that the claim here was not progressed to this Division as expeditiously as required by Rule 25 (b) and that the claim as it presently stands for consideration here is substantially different, both in form and in substance, from that handled on the property, for which reason the claim should be dismissed. As to the merits of the charges brought and the guilt of Claimant the Respondent took the position that the evidence was clear that Claimant had given service on verbal rather than written order as required by the General Rules and Standard Service Manual; and that conclusive evidence was adduced as to the mishandling of meal checks. It was further contended that the entry of Notation on Claimant's record was not in the premises, unjustified.

Claimant here was held out of service as of September 7, 1955, pending investigation of charges arising out of incidents which occurred on August

25, 1955. Hearing was held on September 13, 1955. Carrier made an offer to reinstate Claimant on September 14, 1955 without compensation for time held out of service. While this offer was refused Claimant returned to service on October 9, 1955.

On the basis of the record as a whole we cannot agree with the Respondent that this Claim was not timely handled on the property. Nor can we agree that this claim should be dismissed for the reason that the form in which it is presented here is substantially different than that in which it was presented on the property. While admittedly there is a variance we do not think that such variance is fatal to its (claim) consideration. We have held that all that is required of a claim is that it be presented in a manner and form that will enable a Carrier to identify the Scope thereof and be in a position to prepare an adequate defense thereto. The record does not disclose that this condition existed.

We are of the opinion that Claimant received a fair and impartial hearing. We likewise conclude that there was substantial evidence of Claimant's guilt adduced at the hearing. This being true we cannot conclude that the Claimant should be placed in status quo either as to his personal record or as to reparations for the period he was out of service.

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.