Award No. 8301
Docket No. DC-8522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Request of Dining Car Steward E. J. Barry, Northern District, for reinstatement with seniority unimpaired and claim for compensation for all time lost as a result of his dismissal from the service, October 19, 1954, for alleged violation of Rules "E", 802, 803, 804 of General Rules and Regulations and Rules 10A, 10M, 12(a), 12(b), 12(e), 12A(a), 12A(c), of Rules and Regulations on September 2nd and 4th, 1954.

OPINION OF BOARD: Claimant was dismissed for irregularities in handling meal checks. Employes state:

"The basic issues here presented may be briefly summarized as follows:

(1) Was Claimant Barry accorded a fair and impartial investigation, as required by the controlling Agreement?

(2) Does the record disclose the establishment of guilt by the required measure of competent evidence?"

To establish the negative of these two propositions Employes contend:

"(a) Claimant Barry was denied the right to be represented by the Local Chairman of his Organization, as specifically provided for in the rule.

(b) Claimant Barry was denied the opportunity of postponement for the purpose of arranging witnesses necessary to his defense against the charges made against him.

(c) The investigation was conducted under conditions and in an atmosphere prejudicial to a fair and impartial investigation, also, that there were discrepancies and omissions in portions of the testimony, as reported in the transcript.

(d) The Carrier attempted to discredit testimony favorable to the Claimant by subjecting the witness giving such testimony to ridicule and reproach."

We will consider these points in order.

(a) Rule 20 reads in part:

> "* * * At such investigation he will be entitled to be represented by the Local Chairman of his organization, or by a steward of his choosing on his seniority district."

Here the local chairman was attending the Organization's National Convention in Florida, but before he left he designated one Rutledge as "Acting Local Chairman". Rutledge represented Claimant at the hearing, and was "the Local Chairman" for the purpose of this hearing.

It may be noted the local chaiman's absence was not prejudicial to Claimant, who conducted his own defense in a manner that would have done credit to the best of defense attorneys.

(b) As to further postponement requested by Claimant, the Carrier had already postponed the hearing once at his request, and since the rule requires that the hearing shall be held promptly "ordinarily within five (5) days" Carrier could have been subject to possible violation of the rule in case of further postponement. And Claimant admits that the testimony of the witnesses wanted would have been at most corroborative of testimony already given, and in view of subsequent developments wholly redundant.

The rule 20(b) requires merely the establishment of all the **essential** facts. The essential fact in this case was Claimant's failure to give meal checks to certain patrons of the Dining Car. There is ample evidence in the record on that.

(c) The principal condition complained of was that part of the hearing was held in an old dining car that had no air conditioning, and on that particular afternoon, it was extremely hot, but it was just as hot for one side as it was for the other, and no rule requires that these hearings be conducted in air conditioned quarters. As to "eavesdroppers" being present —no rule requires that these hearings must be closed. The alleged discrepancies were on irrelevant matters.

(d) Claimant complains about witness Nix being subjected to "ridicule and reproach." If such it was, it was in relation to discipline which Carrier was justified in imposing on this witness.

Employes further state:

> "Another phase of this record worthy of notice, is revealed by what later occurred with respect to Waiters Perry and Nix. These were the employes who corroborated Claimant Barry's testimony as to what had taken place on the three incidents here involved. Subsequent to Claimant Barry's discharge as of October 19, 1954, Perry and Nix were cited and charged with responsibility in connection with the same incidents as had formed the basis for Claimant Barry's discharge. These two employes were likewise dismissed from the Carrier's service following investigation held on November 18, 1954."

Transcript of those investigations are in this record. They were later restored to service.

Employes therefore ask the question:

> "* * * Why Claimant Barry was not afforded similar consideration by the Carrier."

The answer becomes obvious as one reads the transcript of those investigations. Both waiters admit violations of the Carrier's instructions hereinvolved, and admitted their testimony in behalf of Barry was incorrect and stated that they were acting under instructions from Barry, their

Steward, the Claimant in this case, and as noted above, it was in connection with the same three incidents involved in the instant dispute.

So we get back to the two "basic issues" urged by the Employes at the start of this opinion.

This investigation was as fair and impartial as was possible under the circumstances with the Claimant assuming a role of "prosecuting attorney" in trying to prove the Carrier's officials were violating Rule 20. We think the record shows that Assistant Superintendent Sullivan, who conducted the investigation, exercised considerable restraint in face of a very difficult situation, knowing that he was under fire from the General Chairman's letter to the President of the railroad.

That the record discloses the establishment of guilt by the required measure of competent evidence is apparent. In addition to the testimony of the Carrier's special officers we have the testimony of the waiters who took the orders in the three incidents in which Claimant was involved, all indicating that he was guilty as charged.

Our conclusion is that the Carrier did not violate the Agreement and the claim should be denied.

For a like result on a strikingly similar situation see Award 2766 involving the same parties, the same offense, the same Rule 20, except a different steward.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1958.