

Award No. 8504

Docket No. DC-8847

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Carroll R. Daugherty, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES LOCAL 385**

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

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 385 on the property of Chicago Milwaukee St. Paul and Pacific Railroad Company for and on behalf of E. D. Walker, waiter, that he be restored to service with seniority rights unimpaired with compensation for net wages lost account having been removed from service by Carrier in violation of Rule 8 of the current agreement.

**OPINION OF BOARD:** Claimant Walker, employed by Carrier in its Dining Car Service Department since 1938, was dismissed from Carrier's service as of August 17, 1955, following an investigation announced on August 2, 1955, and held on August 9, 1955, on charges of misconduct on July 2, 1955. There were six specific charges: (1) discourteous treatment of guest at his station during breakfast on July 2, 1955; (2) causing guest to leave meal without eating; (3) resulting loss of revenue to Carrier; (4) use of rude, unpleasant, embarrassing language to breakfast guests that date; (5) unnecessary discussion with guests and use of loud, disparaging language; and (6) in so doing, assuming authorities not given to him as waiter.

Timely appeals and answers thereto brought no reversal of the decision to discharge claimant. The evidence on which the original decision was mainly based came from (1) a letter from Mrs. Bobby Williams, breakfast guest mainly involved on July 2, 1955; (2) written record of interview with Mrs. Williams by Carrier employee; (3) written records of interviews by Carrier employees with two table-mates of Mrs. Williams; and (4) written record of discussion with head waiter in claimant's car. Claimant's past record was introduced at the hearing.

The Organization contends that Carrier failed to accord claimant a fair hearing as required by Rule 8, in that (1) the evidence adduced at the hearing did not establish claimant's guilt; (2) the statements on which the decision was based were solicited; (3) Carrier did not call claimant's crew members to testify; and (4) Carrier placed claimant's past record in evidence at the hearing.

These contentions are here considered in the order stated just above. As to (1), the statements introduced by Carrier, taken at face value, decisively point to claimant's guilt. They were not successfully controverted by opposing testimony. As to (2), the statements may be accepted at face value not only because not successfully shaken but also because this Board has not been disposed to bar solicited statements as proper evidence. As to (3), Carrier might well have interviewed claimant's fellow employes other than the waiter in charge. But claimant's rights were not prejudiced by Carrier's failure to do so, because claimant and his representative were free to call said employes as witnesses if desired. As to (4), the Board finds no evidence that Carrier used claimant's past record, as introduced at the hearing, for any purpose other than to determine the degree of discipline to be assessed. Claimant's rights were not prejudiced by said introduction and use.

Applying the other criteria for discipline cases set forth in this Division's Award No. 8431, the Board finds in the record of the instant case no evidence which would compel the conclusion that Rule 8 was violated and that the Carrier's decision was so arbitrary, capricious, and unreasonable as to constitute an abuse of discretion meriting reversal. The claim cannot be sustained.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 30th day of October, 1958.