

Award No. 8574

Docket No. DC-9943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 848

**CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 848 on the property of Chicago, Burlington and Quincy Railroad for and on behalf of Waiter Charles Smith that he be reinstated with compensation for net wages lost, seniority unbroken and all other rights unimpaired account being unjustly, arbitrarily and discriminatorily dismissed from Carrier's service on May 15, 1957.

OPINION OF BOARD: Claimant, Waiter Charles Smith, was dismissed from Carrier's service on May 15, 1957 under charges of failure to properly issue checks, properly receive dining car orders, and improper reporting and remitting of funds on a buffet car. The Claimant was a waiter on a buffet car. The balance of the crew consisted of a waiter-in-charge, and a chef. On March 28, 1957, an investigator of the carrier entered the car and ordered a beer, for which he received a proper check. Subsequently he ordered another beer and a sandwich. For the second beer and sandwich, he was not given a check, but was asked for and paid the proper amount.

On May 4th, 1957, two operatives of the carrier sitting at separate tables, ordered a beverage and a sandwich, for which they received a proper check, and paid. Subsequently they each asked for a duplicate order, for which they paid and received no check.

After hearing June 4, 1957, all three employees were discharged, but on August 5, 1957, the waiter-in-charge and the chef were reinstated (subject to loss of pay May 15 to August 5th), but the Claimant was not so reinstated, and therefore makes this claim. Much of the gravamen of the claim appears to lie in that the punishment of the Claimant was not the same as that of the rest of the car crew.

There appears to be little merit to the claim. Claimant was dishonest. He failed to properly account for Carrier's funds which came into his possession. This is clear and unequivocal. Where dishonesty is involved leniency cannot be lightly indulged in by the reviewing authority. The element of dishonesty did not enter into the guilt of other members of the crew. Their part was in failure

to supervise, failure to insist on proper food checks, before food was issued. This is a lesser offense. The punishments ultimately assessed were not, therefore, unequal for equal offenses.

The Carrier stresses a point that the contract requires that claims be filed with the crew supervisor, and that this claim not being so filed, should be dismissed for technical reasons. The theory has merit, but the position here has not. This is not a general claim, but a claim for leniency after a hearing. To require matters of this kind to be channeled through a crew supervisor after the Carrier's higher officers have made a decision would serve no useful purpose. The crew supervisor could not reverse the higher officers, who have been subrogated to his authority.

The question of entrapment and double jeopardy, raised at the hearing, have no merit.

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 Agreement was not violated.

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 December, 1958.