

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 370 on the property of Delaware, Lackawanna & Western Railroad Company for and on behalf of Charles Kingsley, Porter-in-Charge, that he be reinstated in Carrier's employ with vacation rights and seniority unimpaired and compensated for net wages lost account Carrier's dismissal of claimant on May 26, 1958, in violation of agreement.

OPINION OF BOARD: The claim is that Claimant be reinstated in Carrier's employ and compensated for net wages lost because of his dismissal on May 26, 1958, after a hearing with due notice.

At the outset of the hearing, Claimant's representative objected that the charge was vague, indefinite and incapable of defense. But the notice of hearing served on Claimant stated as follows:

"You are charged with misconduct while working as Porter-In-Charge of the buffet-lounge car on Train No. 5, Sunday, March 16, 1958. Copy of the charges is attached and made a part of this notice."

The document attached was a copy of the letter from Jack Evans, a patron, detailing the misconduct complained of, essentially in accord with his subsequent testimony at the hearing. It is not suggested how the charge could have been made more specific.

The testimony by the witness Jack Evans, who was not an employe of the Carrier, fully sustained his written complaints of insolence, solicitation of tips, solicitation of a drink and conduct which might have subjected Claimant and Carrier to a prosecution for violation of a Sunday closing law.

Claimant's representative demanded that the witness state his place of business and home address, giving his reason for the demand as follows:

"You have made accusations against an employe that may cause a disciplinary action to the fullest extent the Carrier may

impose on the employe. In the last paragraph of your letter you made libelous accusations and in the event the employe is vindicated it is necessary that we have your address."

The hearing officer asked Claimant's representative to discontinue intimidating the witness by threats of action for libel. Claimant's representative disclaimed any intent to intimidate the witness but repeated:

"* * * it is necessary that we have his address as the last paragraph, if not true, is slanderous and libelous."

Thus he only emphasized and repeated the threat, and upon the witness' refusal to state his residence and place of business, refused to cross-examine him. He did not call Claimant as a witness or offer any other evidence.

But in response to questions by the hearing officer, Claimant admitted that he had announced that the bar would be closed at 6:30, as stated by the witness, denied serving alcoholic beverages after entering the State of Pennsylvania, and added:

"* * * The rest is a pack of lies and still is a lie. Why should I ask the likes of him to buy me a drink."

But he did not elaborate, seek to explain, nor offer his version of the incident.

On the other hand, the witness Jack Evans testified in detail. There is nothing in his testimony that seems unbelievable or contradictory, and the only objection urged is that in the face of threats of libel and slander litigation, he refused to state his residence or place of business. His refusal to facilitate such litigation does not cast doubt upon the truth of his testimony or make it unbelievable, and we cannot find that the hearing officer abused his discretion in believing it.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively carrier and employe 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 23rd day of July, 1959.