

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 351, on the property of Chicago and North Western Railway Company, that James E. Robinson be reinstated with seniority and vacation rights unimpaired and that he be compensated for all net wages lost, on account of being dismissed by Carrier, contrary to provisions of current agreement.

OPINION OF BOARD: Claimant was duly informed in writing by J. E. Verona, Manager Dining Car Department, of an investigation to consider charges that at the time in question he had been discourteous to Steward Bauer and Staff Officer Curlin, had used vulgar and profane language toward them, and did not obey their instructions.

The objection is made that the officer who ordered the investigation presided thereat and subsequently ordered Claimant's dismissal. The investigation was ordered upon written charges by Steward Bauer and Staff Officer Curlin. The Manager's issuance of the order for the hearing no more disqualifies him from conducting the hearing and making a decision than does a judge's or magistrate's order for the issuance of a citation or warrant of arrest. The Manager had no personal knowledge of the occurrence, and did not testify. This instance is not analogous to a hearing in which the presiding officer has occasion to consider his own testimony or credibility.

Asked at the outset whether he wanted any witnesses present on his behalf, Claimant stated: "We will use your witnesses." Carrier had Chef Perry present but did not call him as a witness. During Carrier's presentation of evidence Claimant's representative stated: "We have requested Mr. Perry to be called into the investigation for the purpose of examination and was refused the right to hear him by Mr. Verona." But at the close of the Carrier's case he did not call Perry or any other witness on Claimant's behalf; and at the end of the hearing Claimant stated that he had had a fair and impartial investigation. Consequently he is not in a position to complain because Carrier did not call the witness, and the record does not indicate the nature or materiality of his expected testimony.

The further argument is made that the Carrier failed to render a decision as required by the Rules. Claimant was notified in writing that after investigation of the charges "the following discipline has been applied: Dismissed." The objection seems to be that the notice did not specifically announce a decision of guilt. But no specific form or wording of the decision or notice is prescribed by the Rules, and Claimant cannot have been misled or prejudiced by the form used.

The testimony of the staff officer and steward was clear and consistent, and amply sufficient to establish Claimant's guilt, in spite of his own denials and the unwilling testimony of his co-employees. A waiter testified that he heard a discussion between the three men; that something was said about getting supplies and he heard the staff officer tell Claimant to get off the car, but that he didn't know why and heard no vulgar or profane language. The third cook testified that he saw the three men on the car, but that he himself was not in the diner and did not hear the conversation. A chef who was not working that day stated that the steward told someone in the pantry to get the supplies but he didn't know to whom it was said, although the steward, the staff officer and the Claimant were the only ones there; he heard a heated argument and some vulgar and profane language but did not know who used it. Asked whether he had any words with the steward and staff officer on that occasion, Claimant said, "They both had words with me," but that there was no profane or vulgar language on either side; that the steward came to him in the pantry and said "in a very nasty way, shaking his finger in my face, had he told me three times to get supplies?" While there were some denials the evidence raises little conflict concerning the basic facts.

In Award No. 9046 this Division said:

"As a legion of prior awards makes clear, it is not our province to weigh the conflicting evidence (See, e. g., Awards 7020, 6866, 5426, 3827, 3149, 1987). Since the record discloses ample competent evidence, denied by Claimant and other witnesses but nevertheless of probative value, that supports the charges against Claimant, we will not upset the findings of the Carrier as to the Claimant's negligence. While the discipline meted out by the Carrier might well have been less severe than dismissal, * * * we can not validly hold that it is arbitrary or incommensurate with the offense. * * * The claim will accordingly be denied."

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and the 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1960.