

**Award No. 9805**

**Docket No. DC-9338**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Donald F. McMahon, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 849 on the property of Chicago, Rock Island and Pacific Railroad Company for and on behalf of Waiter-in-Charge Louis Sutton; that he be paid wages lost, less amount earned in any other service, account having been suspended for fifteen days; said discipline having been assessed in violation of Rule 11 of the effective agreement.

**OPINION OF BOARD:** The claim here is for payment for wages lost by the employe, brought about by a fifteen day suspension assessed by Carrier for an alleged violation of Rule 11 of the Agreement in effect between the parties.

Carrier contends the employe was furnished a fair and impartial Hearing and Investigation and that from the facts developed as shown by the transcript and hearing, that the employe was guilty of insubordination and was assessed a fifteen day suspension from service.

It appears from the record here that Carrier did furnish the employe a fair and impartial Investigation and Hearing, but the suspension assessed by Carrier was arbitrary on its part and was not justified under the facts before us, to assess a fifteen day suspension, against the employe as such penalty assessed is unfair and unreasonable.

Claimant here was employed by Carrier, he was on duty as Waiter-in-Charge of the diner on July 16, 1955. He had direct supervision over other waiters on the diner as well as other duties required of him by Carrier. On the date in question Traveling Chef Karlenzig boarded the train and having supervisory authority over Claimant proceeded to make whatever inspection of the diner he thought was necessary. He then took a position in a hallway between the pantry and the diner portion of the car and as he states at the Investigation and Hearing, he was observing food orders being served passengers. The place where the Traveling Chef took up his position to make

such observation is a narrow aisle or hallway having a width of 29½ inches. It is observed the Chef weighing some 200 pounds, and placing himself in such position for a large man, waiters would have difficulty in carrying food trays past him between the pantry and the diner. The Claimant requested the Chef to change his position to relieve the crowded condition he was causing, and the Chef immediately taking exception to Claimant's request and interpreting it as an order to change his position, refused to move and made a report that Claimant acted in an insubordinate manner toward him. Following this incident the Investigation and Hearing took place and Claimant was assessed a fifteen day suspension. The Chef also makes mention in his testimony as shown by the transcript of the hearing, that Claimant also committed other acts of insubordination to him, but such are not included in the Notice to Claimant of pending Investigation and Hearing, and are not considered by the Board, since Claimant was tried on only the charge of ordering the Chef to change his position where he was standing in the hallway.

The various Divisions of the National Railroad Adjustment Board are in accord in many awards that such Boards will not substitute their judgment for that of Carrier, where it is clear that Carrier has not acted in an arbitrary or capricious manner in assessing penalties against employes in discipline cases. The facts and record must be reviewed in each case in order to determine if Carrier has acted in an arbitrary and capricious manner in exacting a penalty against the employe.

There is no evidence before us that the Claimant used abusive, profane or boisterous language in his conversation with the Chef, nor is there any evidence that the passengers were in any way disturbed by such conversation. Insofar as the facts and circumstances on which the claim here arose, we conclude that Claimant did not order the Chef to change his position in the hallway as alleged, but in performing his own duties as Waiter-in-Charge he was within his rights in making the request as he did, and such request does not constitute an act of insubordination. The Chef in taking an arbitrary stand in his refusal to comply with the request, it appears, that he was taking an undue advantage of his position, and having superiority over Claimant, by demonstrating such authority by his remarks and his refusal to change his position does not support the contentions of Carrier.

Carrier under the facts and circumstances shown here, did furnish a fair and impartial hearing, but the decision rendered by Carrier was wholly unfair and unreasonable and is not supported by the record, and we conclude that the suspension of Claimant should be set aside, that his record be cleared showing such suspension, and that his claim be sustained in its entirety.

**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 Agreement was violated.

**AWARD**

**Claim sustained as set out in the foregoing Opinion and Findings.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

**Dated at Chicago, Illinois this 2nd day of February, 1961.**