

Award No. 10304

Docket No. DC-9956

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES UNION LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 516 on the property of Great Northern Railway Company for and on behalf of Waiter Edward Hansford that he be compensated account ten days' suspension from November 22 to December 1, 1956, inclusive at claimant's current rate of pay account said suspension being in violation of agreement and arbitrarily imposed upon claimant and that entry on claimant's personnel record account said discipline be expunged.

OPINION OF BOARD: Claimant Edward Hansford was Waiter #1 on diner #1154, Train #3, Great Northern Railway on November 10, 1956.

There was on that train two investigators working for the E. M. Burch Co., that was retained by the Great Northern for the purpose of investigating methods and procedures of the Carrier's Dining Car Service. Mr. Miller is identified as Operative #3 and Mrs. Miller as Operative #62.

About 8:30 A.M. Mr. Miller ordered breakfast by ringing for the porter of Pullman Car #34, and handing him a telegram blank with the food he wanted for breakfast written on it, and a ten dollar bill. About twenty minutes later Claimant Waiter #1, returned with the food that Mr. and Mrs. Miller ordered. At the time Waiter #1 delivered the food he did not have with him a guest meal check, and when he returned for the tray and dishes sometime later, he did not have a guest meal ticket, but told the Millers that their breakfast cost was \$5.20 and gave Mr. Miller change of \$4.80.

On November 20, 1956 Claimant was notified to appear for formal investigation pursuant to letter from General Supt. of Dining Cars, which set out the charges, with which Claimant was accused. The investigation was held on November 27, 1956, and as a result of same Carrier suspended Claimant from service for a period of ten days to-wit from November 22 to December 1, 1956.

The Organizations General Chairman appealed from the discipline imposed to the officer designated on the property to whom such appeals are made. That official on February 11, 1957 declined the appeal.

The evidence clearly shows that the Claimant was guilty of improper handling of guest meal check Form L-87—and failure to obey existing instruc-

tions in serving an order to Mr. and Mrs. Miller on November 10, 1956 on Train #3 of the Great Northern Railway.

The Employees contend that the Carrier denied Claimant a fair and impartial investigation to which he was entitled under the Agreement, when it failed to produce a material witness, when requested to do so by the Claimant. At the investigation the Employees objected to the failure of the Carrier to produce the Pullman Porter, to whom the Millers had given the telegram blank, on which the order for the food was written by Mr. Miller. Objection was raised by the General Chairman representing Claimant and postponement was requested. There is no record in regard to what the Pullman Porter would have testified to had he been produced, and in view of the evidence presented there is nothing that the Pullman Porter could have testified to that could have materially changed the record before us.

Claimant was fully aware of the charges placed against him and in the notice he was informed that he could present witnesses that he desired at the investigation.

In Award #6067 (Referee Wenke) the Third Division said:

"* * * If Carrier adduces sufficient evidence to fully determine the facts that is all that is required of it. If Claimant desires to question any witness the Carrier has not produced the burden rests upon him to call them, as the rules of the parties' Agreement provides he may."

The Claimant had a fair investigation as required by the Agreement.

Under the record before us, we come to the conclusion that the Carrier was justified in suspending Claimant, and that its action in so doing was neither arbitrary nor unwarranted.

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 the Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1962.