

Award No. 10571

Docket No. PM-12347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF SLEEPING CAR PORTERS
(FOR AND IN BEHALF OF WILLIAM WATSON)**

NEW YORK CENTRAL SYSTEM

STATEMENT OF CLAIM: "... for and in behalf of William Watson, who was formerly employed by the New York Central System as a sleeping-lounge car attendant, operating out of the City of Chicago.

Because the New York Central System did, through Mr. I. L. Austin, Assistant Manager, Dining and Sleeping Car Service Department, under date of June 27, 1960, take disciplinary action against Mr. Watson in dismissing him from his position as a sleeping-lounge car attendant on the New York Central System.

And further because said dismissal was based on charges which were not proved, and the nature of the evidence presented was such that Mr. Watson could not have a fair and impartial hearing.

And further because Mr. I. L. Austin, Assistant Manager, New York Central Dining and Sleeping Car Department, acted as a prosecutor bringing evidence against the employe in the hearing, further rendered a decision dismissing the employe, and when the case was appealed to Mr. A. H. Smith, Manager, under the provision of the contract, Mr. Austin sat at the side of Mr. Smith and participated in the conference on the appeal from which final decision sustaining the disciplinary action was made.

And further because the action in discharging Mr. Watson under the circumstances herein stipulated, was unfair, unjust, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Mr. Watson to be cleared of this charge, and for him to be reinstated in the service with seniority rights and vacation rights unimpaired with pay for time lost as a result of having been unjustly dismissed from his position, as is provided for under the rules of the Agreement covering the class of employes of which Mr. Watson was a part."

OPINION OF BOARD: This is a case involving discipline. On June 13, 1960 charges in writing by letter, were preferred against Mr. William Watson, Claimant, by Mr. J. P. Dowey, Superintendent, Dining and Sleeping Car

Service, charging four violations of the Carrier's rules with respect to food service and the use of meal checks, reading as follows:

- "1 — Failing to furnish check to guests desiring food service, train 59, May 9, 1960.
- 2 — Serving food to guests, train 59, May 9, 1960, without use of check.
- 3 — Failing to present check to guests when making collection for food service, train 59, May 9, 1960.
- 4 — Failing to remit to the Company certain revenue derived from food service, train 59, May 9, 1960."

The said letter further notified Mr. Watson to be present at a hearing with respect to said charges at Room 1210, LaSalle Street Station, Chicago, Illinois, at 10:00 A. M., Daylight Saving Time, Tuesday, June 21, 1960.

Hearing was held on said day and testimony was adduced thereat. Claimant was present at said hearing and was represented by two members of the Organization.

Carrier's charges against Claimant are based upon alleged violations of Carrier's Rules and the pertinent rules involved are as follows:

"A-2 When food service is desired, attendant will present menu and check, together with pencil. There must be no delay in presenting check on which the guest shall be requested to write his order. Attendants shall not write meal orders on checks except under circumstances where the guest is unable or unwilling to do so. In every instance, the meal order must be written on the check before any service is provided.

"A-8 At completion of service, attendant will present check face down on cash tray. When payment is received, he shall in a moderate tone state the amount received and mark the amount tendered in space provided at top of check. Attendant will then return proper change to guest on cash tray.

"A-10 Any attendant who wilfully fails to furnish a check to a guest when service is desired, or who serves or allows to be served food or beverages without use of a check, is subject to dismissal."

Testimony was received from various witnesses and following the hearing and on June 27, 1960, Claimant and the Organization were notified by letter from I. L. Austin, the hearing officer, that Claimant was found guilty of each of the four charges and that he was dismissed from service.

The first contention of the employe is that one I. L. Austin, Assistant Manager, Dining and Sleeping Car Service Department, submitted the evidence at the hearing, conducted said hearing and rendered the decision, following the conclusion of said hearing. We have repeatedly held that there is nothing in the rules of the controlling Agreement defining who shall prefer charges or conduct hearing. See Awards 8725, 2608, 4840.

Employe's next contention is that when the matter was submitted on final appeal to Mr. A. H. Smith, the highest officer designated by Carrier to handle appeals, Mr. I. L. Austin who had originally rendered the initial decision, was

in close contact with Mr. Smith in conference on appeal and "definitely wielded the closest influence in connection with the decision." There is no rule in the Agreement which would prohibit or restrict the presence of Mr. Austin. Mr. Smith's decision on the appeal was made August 12, 1960 and reads as follows:

"Mr. Milton P. Webster
First International Vice President
Brotherhood of Sleeping Car Porters
3947 Drexel Boulevard
Chicago 53, Illinois

Dear Sir:

I have carefully reviewed record of the hearing held June 21, 1960, on charges preferred against SLCA William Watson and have considered the arguments which you advanced in appeal at our conference August 10.

It is my finding that the evidence establishes Mr. Watson's guilt with respect to each of the four charges contained in Mr. Dowey's letter of June 13, 1960. I further find that the discipline assessed is fair and reasonable and consistent with the offense.

Decision of the hearing officer dated June 27, 1960 is affirmed; the appeal is denied.

Very truly yours,

/s/ A. H. Smith"

It will be noted that he stated he had carefully reviewed record of the hearings, had considered the arguments which had been advanced and that the decision of the hearing officer was affirmed. We find no merit in this contention.

The evidence relative to the violations was given at the hearing by two Pinkerton Operators who had been assigned to this particular train for checking. They gave clear, concise testimony, supported by notes made at the time of the occurrences, as to each of the violations; they were subjected to vigorous cross-examination by representative of the Claimant.

There was testimony by one Walsh, Carrier's Food Control Supervisor, that there were no checks turned in for the specific items purchased, as set forth in the charges submitted. Mr. Walsh also testified that on trips, the stock on lounge cars is checked and, charged to the attendant in charge and upon their return to the terminal the cars are sealed and then checked and that this was done in connection with the particular car involved and that the only shortage found consisted of four milks.

Claimant testified in his own behalf and denied he had committed any of the offenses charged.

Claimant claims the record in this case clearly shows discrimination, prejudice and bias on the part of the Carrier and states

"that this is true is clearly evidenced by the following statement of Respondent:

'As a matter of fact, a specific showing that the car was short supplies allegedly sold and not listed on checks is not an essential element of proof insofar as the charges preferred against claimant are concerned. It is entirely possible for employees, by reducing the portions served guests, to stretch

the supplies issued to the car sufficiently to absorb sales made on verbal order. Another device is to list the items served without checks as food consumed by the crew."

The foregoing is not a complete copy of Respondent's statement as Claimant omitted the last line thereof, which reads as follows:

"... And, employes have been known to purchase supplies themselves and sell this merchandise on the car for their own profit."

We have examined the record carefully and are unable to find evidence of discrimination, prejudice or bias. Certainly it is not shown by the statement of Respondent, as fully quoted in this award in the preceding paragraphs. This statement points out the various ways that employes in Claimant's category, may cover up peculations.

In evaluating the charges considered in this Award, the Board has considered that discipline is a prerogative and discretionary power of management and has followed the well established rule that the Board may not interfere with such disciplinary action unless it clearly appears that it is unjust, unreasonable, capricious or arbitrary.

The Board has followed the rule of this Division that we do not resolve questions as to the credibility of the witnesses nor the weight to be given their testimony: that is the function of the trier of the facts. This does not mean we were or are precluded from carefully reviewing all of the evidence of record to determine whether it supports the action taken. Our appellate function is necessarily limited and we should refrain from substituting our judgment for that of the Carrier in disciplinary cases unless there is an abuse of discretion or substantial error.

The record discloses ample competent evidence to support the charges against the Claimant and we hold that the action of the Carrier in so holding, and in assessment of a penalty of discharge or dismissal from service was not unjust, unreasonable or arbitrary.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1962.