

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Steward F. H. Christesen for reinstatement to service with seniority and vacation rights unimpaired and pay for all time lost from October 8, 1959, as the result of his suspension for a period in excess of 30 days and his subsequent dismissal.

OPINION OF BOARD: On September 8, 1959 Claimant, a dining car steward, was called into the office of his Superintendent and interrogated with respect to the complaint of a female passenger concerning his attentions to her. Carrier at this time notified Claimant he would be held out of service. On October 16, 1959 Carrier notified Claimant in writing that he was charged principally with conduct unbecoming a dining car steward, in violation of Rule 18(t) of Manual of Instructions, consisting of annoyance to and embarrassment of the passenger by unnecessary conversation and attention; and further notified him to appear for an investigation on October 28, 1959 under Article 6(a) of the Agreement between the parties effective August 1, 1952 as to rules. Investigation was held and Carrier dismissed Claimant on November 18, 1959.

Article 6(a) states:

"(a) A dining car steward who has established seniority under provisions of Article 3 will not be discharged, or suspended for a period in excess of thirty (30) days, without an investigation. When suspended for any infraction of the rules, or other offense, if he requests it in writing within ten (10) days after such suspension, an investigation will be held within ten (10) days after receipt of the request, if practicable. At this investigation, the dining car steward may have present the duly accredited representative, party to this agreement, or a dining car steward in service on the Atlantic Coast Line Railroad, and such witnesses as may have information in the case. The Steward will arrange for the attendance of his witnesses. The case will not be reopened unless new evidence be submitted in writing within sixty (60) days after he has been notified. If exonerated, he will be paid for the time lost."

Petitioner characterized the action taken on September 8, 1959 as a suspension of Claimant from service which continued more than 30 days without a formal investigation. Therefore, Petitioner maintained, without such an investigation within 30 days—which is urged was a required time limit—the permissible discipline was limited to a 30 days' suspension and the dismissal, involving a claimed second disciplinary measure for the same offense, was improper.

Carrier maintained the September 8, 1959 meeting was an "interview", not a "hearing" in the words of Petitioner, nor an "investigation" within the purview of Article 6(a). Carrier asserted it followed its customary procedure here, that when a report of serious rule violation or misconduct was received it would either obtain a written statement from the steward involved and/or bring him to the office for personal discussion, thereafter deciding whether a formal investigation was indicated.

Carrier further maintained that Claimant was "held out of service", and properly so, from September 8 until the fact-gathering preliminary to investigation itself could be completed, and that he was not suspended during that period. As to this, Petitioner argued that, in the absence of specific provision, Carrier could not hold an employe from service indefinitely before conducting an investigation, for otherwise the Carrier could disregard the investigation procedures and mete out unlimited discipline by this simple expedient.

Carrier also maintained that Article 6(a) imposed no time limit within which an investigation for a disciplinary measure of over 30 days must take place.

The Board views the September 8, 1959 meeting as an interview (Award 8990) and Carrier's action as a withholding from service, rather than a suspension. This Board has held that a Carrier may exercise discretionary powers to withhold an employe from service, pending determination of physical or mental fitness, free from disturbances in the absence of a "clear affirmative showing that they have been exercised in an unreasonable, arbitrary or capricious manner." Awards 6753 and 4816. Carrier properly withheld Claimant from service here upon reasonable grounds consisting of a serious complaint questioning his fitness, in a different sense, pending inquiry into the facts and investigation pursuant to Article 6(a). Although this somewhat resembles disciplinary action, in that the employe is off the payroll, still it is not in essence discipline, as this concept is ordinarily understood, and it is not governed by any time limits found in Article 6(a). It follows that the dismissal was the only disciplinary action taken against Claimant.

The Board finds no provisions, express or implied, in Article 6(a) which would require the investigation itself to take place within 30 days of a particular event. The Agreement forbids either discharge, or suspension lasting more than 30 days, without an investigation, but nothing therein may be interpreted to require Carrier to hold the investigation within a specified period of time.

The Board therefore concludes that there has been no violation of the technical requirements. Furthermore, the record amply supplies grounds for sustaining the dismissal, on the merits.

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 the Carrier did not violate 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 24th day of May 1962.