

Award No. 10717

Docket No. DC-10164

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ben Harwood, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849**

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

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees Local 849 on the property of Chicago, Rock Island and Pacific Railroad Company for and on behalf of Donald Sullers, Waiter, that he be compensated for net wage loss suffered account Carrier's imposition of discipline of 30 days suspension October 14, 1957 to November 14, 1957, in violation of the effective agreement.

**OPINION OF BOARD:** In a letter from the General Superintendent of Carrier's Dining Car Department, dated September 16, 1957, the Claimant received notification of an investigation to be held September 24, 1957 with reference to a report that Claimant had violated Rule "N" of the Chicago, Rock Island and Pacific Railroad Company Dining Car Department. The letter, as set out in the transcript of the hearing, quoted Rule "N" to be as follows:

"Courteous deportment is required of all employees in their dealing with the public, their subordinates and each other.

Employees who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service.

Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property."

Further, the quoted letter of notification stated that Claimant's alleged violation of Rule "N" was "by the belligerent attitude you displayed towards Traveling Chef E. Karlenzig."

Following the formal investigation, which after postponement was held on October 2, 1957, the Claimant was suspended from service from October 14 until November 14, 1957 because he was "... insubordinate to traveling chef, E. Karlenzig. . ."

This "discipline" was appealed to G. E. Mallery, Manager of Personnel, on October 16, 1957 and was by him denied on October 29, 1957. The Joint Council of Dining Car Employes, under date of January 13, 1958, gave notice of intention to file an Ex Parte Submission. This was done January 27, 1958. Carrier's Ex Parte Submission, after an extension of time, was filed March 11, 1958.

The Agreement between the parties with which we are concerned was that dated November 1, 1938, as revised March 20, 1943 with later substitution for Rule 11, effective November 15, 1954.

Employes contend that Carrier failed to accord Claimant the fair and impartial investigation required by Rule 11; that inasmuch as Rule 11(e) requires that the General Superintendent, Dining Cars, will render the decision, as was done here, it is not a fair and impartial investigation unless the same official has also presided at the hearing, whereas the presiding officer in this case was the Assistant Superintendent of Dining Cars. However, the rule makes no requirement that the official rendering the decision shall preside over the investigation. Furthermore, there is no showing that the General Superintendent, Dining Cars, who made or confirmed the decision, at least insofar as signing and sending the "Notice of Discipline" to Claimant is concerned, was the official who made the initial determination that Claimant was guilty of insubordination. See Award 8310. We cannot find therefore that in this regard there was not a substantial compliance with the provisions of the Agreement.

Next to be considered is the Employes' contention that the Carrier abused its discretion in disciplining Claimant; this, on the ground that the evidence shows the charge was not proven and therefore the imposition of discipline was arbitrary.

The altercation giving rise to the claim here considered commenced about mid-afternoon in the dormitory car for dining car employes and was resumed soon thereafter for a short time in the club car. Later that same evening it began again in the main dining car and continued approximately an hour between nine and ten o'clock.

Both parties, Claimant and Carrier, have presented careful analyses of the evidence, transcript of which covered some 33 pages. We do not believe any useful purpose would be served by here again reviewing it in detail. A study of the transcript would indicate some provocation of Claimant, initially in the dormitory car, by Carrier's supervisor or inspector, Traveling Chef Karlenzig, who complained to Claimant when he found him in the dormitory car instead of at work in the club car. Evidence as to such provocation conflicts. However, the evidence discloses no provocation for Claimant's later hostile and recriminatory berating of Traveling Chef Karlenzig in the club car and in the main dining car in the presence not only of other employes, but also of passengers. And although there are conflicts in the testimony of the various witnesses as to what transpired and what was said during the altercations last mentioned, it is not our province to attempt to weigh this conflicting evidence. (See Award 9046.) A study of the entire record leads us to the conclusion that the evidence reasonably supports the finding of the Carrier that Claimant was insubordinate to Traveling Chef E. Karlenzig. Further, we cannot say that the discipline assessed was so great as to be unreasonable or capricious, or incommensurate with the offense. Accordingly, the claim will be denied.

**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 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 27th day of July 1962.