

Award No. 10934

Docket No. DC-11890

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Request of the Brotherhood of Railroad Trainmen's Committee that the Carrier be required to provide witnesses at an investigation at the Carrier's expense when the witnesses are members of the crew and have knowledge of the facts being investigated.

QUESTION AT ISSUE: The question at issue is the compensation in the amount of \$15.55 for a witness at an investigation, who is instructed by the Carrier to attend an investigation as a witness at the request of the employe.

EMPLOYEE'S STATEMENT OF FACTS: In accordance with the Railway Labor Act, the Brotherhood of Railroad Trainmen has an Agreement with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, governing rates of pay and working conditions of dining car stewards.

Dining car steward, J. E. Stevens, received a notice to appear at an investigation, which notice is attached hereto as Exhibit "1".

After the dining car steward received information to the effect that he had to attend an investigation, he advised his Local Chairman, Steward A. Moll, that an investigation was already held on the same subject matter by the Carrier, involving the dining car waiters who were Waiters E. E. Hooper and W. W. Gordon. Inasmuch as waiters Hooper and Gordon were previously required to attend an investigation on the same subject matter, dining car steward Stevens was of the opinion that they should be present at his investigation. Local Chairman Moll concurred with the opinion of the dining car steward and made a request on Mr. M. P. Ayars, Supt. of the Sleeping and Dining Car Department, to have waiters Hooper and Gordon present. (See Exhibit "2".)

The Carrier officer, Mr. M. P. Ayars, Supt. of the Sleeping and Dining Car Department, forwarded correspondence dated November 16, 1959 and November 19, 1959, to Local Chairman A. Moll. (See Exhibits "3" and "4".)

These contentions are here considered in the order stated just above. As to (1), the statements introduced by Carrier, taken at face value, decisively point to claimant's guilt. They were not successfully controverted by opposing testimony. As to (2), the statements may be accepted at face value not only because not successfully shaken but also because this Board has not been disposed to bar solicited statements as proper evidence. **As to (3), Carrier might well have interviewed claimant's fellow employees other than the waiter in charge. But claimant's rights were not prejudiced by Carrier's failure to do so, because claimant and his representative were free to call said employees as witnesses if desired.** As to (4), the Board finds no evidence that Carrier used claimant's past record, as introduced at the hearing, for any purpose other than to determine the degree of discipline to be assessed. Claimant's rights were not prejudiced by said introduction and use." (Emphasis ours.)

In consideration of the findings in the aforementioned awards, as well as the governing rules agreement in effect on this property, we respectfully submit the instant claim to be without merit and request that it be denied in its entirety.

All data contained herein has been made known to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim was not presented by or on behalf of any employe involved.

In effect, the petitioning Organization is asking the Board to make a hypothetical ruling in regard to the proper interpretation of a contractual clause in the applicable agreement of the parties.

We are not empowered to grant this particular type of relief.

The Claim is adjudged barred.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Claim is improperly before us and barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1962.