

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 233

NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Local 233 on the property of New York Central System (Lines West) for and on behalf of Paul Brown, Waiter, that he be compensated for net wage loss suffered account suspension from Carrier's service for 25 days from July 16, 1957, account Carrier disciplining claimant in violation of current agreement.

OPINION OF BOARD: The Claimant was arrested for contempt of court upon the completion of his employment for the Carrier on May 9, 1957. The arrest of Claimant was made by the proper law enforcement officials on Carrier's property with the assistance of Carrier's patrolmen.

Prior to Claimant's arrest a notice and petition directing the Claimant to show cause why he shouldn't be adjudged in contempt of court for failure to comply with an order of the court was mailed to the Claimant.

The above court process was mailed to Claimant on May 5, 1957 to the Claimant in care of the Carrier. The Carrier placed this mail in a mail box provided by it for the handling of correspondence with the Claimant relating to his employment.

On June 5, 1957, while the Claimant was in custody he wrote to the Superintendent Dining Service requesting that he be granted a 90 day leave of absence, this request was denied in letter under date of June 14, 1957, also on the latter date, the Claimant was notified that a hearing would be held on the charge that he was absent from work in violation of Rule 5 of the Agreement.

The Claimant was released from custody. A proper hearing was held by the Carrier in Claimant's presence and the Claimant was subsequently suspended from service for a period of 25 days beginning July 16, 1957.

The Claimant contends that Carrier abused its discretion in disciplining Claimant for violation of Rule 5; that Carrier had knowledge of Claimant's de-

tention; that certain mitigating circumstances are prevailing that do not warrant the extent of the punishment imposed; i. e., failure of Carrier's patrolmen to notify Claimant's superior officer; improper mailing of legal process to Claimant; and Carrier's negligence in failure to deliver the legal process addressed to the Claimant in care of the Carrier.

Rule 5, the relevant rule in issue is as follows:

"(a) Leave of Absence. An employe shall not be granted a leave of absence for a longer period than 3 months, except in case of sickness of himself or members of his immediate family, or when serving on the committee. Proper leave of absence must be obtained from the Superintendent of Dining Service and shall be in writing if leave is to be for more than 30 days, copy to be furnished to the General Chairman. An employe who engages in work outside the company while on leave of absence shall forfeit his seniority unless special arrangements have been made in advance with the Superintendent of Dining Service.

"(b) Absence from Duty. Employes shall not absent themselves from duty without obtaining permission from proper officials. An employe detained from work on account of sickness or for any other good cause shall notify his employing officer promptly, circumstances permitting, and keep him advised with regard to the probable length of absence."

An examination of the record reveals that Claimant's incarceration was the result of his failure to pay his former wife and family the monthly support ordered by the Circuit Court of Cook County. Thus his confinement was the result of his own misconduct.

The mere fact that the Carrier possessed knowledge of a "hearsay nature" that Claimant was in custody prior to his written request for a leave of absence is not binding upon the Carrier.

Under the foregoing circumstances, there was no mandatory requirement in the aforesaid rule providing for the granting of a leave of absence pursuant to Claimant's written request.

Also, the Claimant does not come within the provisions of the second sentence of Rule 5(b).

Finally, there is an absence of anything of mitigating a nature that would indicate that the Claimant was the subject of an arbitrary and capricious decision imposed by the Carrier. The Carrier is not obligated by the terms of the Agreement to receive and deliver Claimant's mail.

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 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 11th day of February, 1963.