# Award No. 11219
# Docket No. PM-12200

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Roy R. Ray, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**

**THE NEW YORK CENTRAL SYSTEM**

STATEMENT OF CLAIM:* * * for and in behalf of H. C. Hines, who is now, and for some time past has been, employed by the New York Central System as a sleeping-lounge car attendant.

Because the New York Railroad System did, through Mr. M. Scavarelli, Asistant Superintendent, Food Standards and Control, under date of June 24, 1960, take the following disciplinary action against Mr. Hines:

> "In view of your responsibility in this matter, a 5-day record suspension will be imposed as the measure of discipline. In the event you are found guilty, within one year of the date of this letter, of conduct similar to that which occasioned the hearing, this will become an actual suspension."

which type of penalty is out of all harmony with present day employer-employe relations, includes a subtle threat, and is not based upon the particular and specific charge in the particular case, and is therefore unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further for the record of Mr. Hines, as a sleeping-lounge car attendant employed by the New York Central System, to be cleared of the charge in this case, and that any reference to this charge be expunged from his service record.

OPINION OF BOARD: Claimant, a sleeping car porter, failed to report for his assignment to Train 59 at Buffalo, New York, on May 20, 1960. After a hearing in which his guilt was established Carrier imposed the following discipline:

> "In view of your responsibility in this matter, a five day record suspension will be imposed as the measure of discipline. In the event you are found guilty within a year of the date of this letter of conduct similar to that which occasioned the hearing, this will become an actual suspension."

Petitioner does not question the finding of Claimant's guilt or the fairness of the hearing. But it contends that the second sentence in the above disciplinary statement which defers actual suspension was a threat, and in violation of Rule 31(a) of the Agreement. Carrier replies that the discipline was fair and reasonable and that nothing in the Agreement precludes it from using this type of discipline.

Petitioner acknowledges Carrier's right to take disciplinary action after Claimant has been given a fair hearing and it admits that the quantum of discipline is the prerogative of Carrier subject to modification for abuse of discretion. But Petitioner denies the right of Carrier to fix a penalty which will come into effect only upon Claimant being found guilty of similar conduct in the future.

Petitioner suggests that if Carrier desired to use a deferred system of discipline the proper procedure in this case would have been to assess Claimant a five day actual suspension and then to suspend penalty conditioned upon Claimant maintaining a good record for a certain period of time. We fail to see any substantial difference between the suggested procedure and that followed by Carrier in this case. In both instances the actual suspension is deferred.

Rule 31(a) relied upon by Petitioner, says: "An employe shall not be disciplined (except pending investigation) or discharged without a fair and impartial hearing . . . Decision shall be rendered within 10 days following the date the hearing is concluded." This rule merely requires a fair hearing and prompt decision. Carrier met these requirements. Under the terms of the discipline, Claimant was not required to serve the five days unless he was found guilty of a similar offense. This means after another fair hearing. Petitioner says Rule 31(a) makes no provision for a deferred penalty. Neither does it prohibit one. It does not prescribe or restrict the discipline to be assessed in any given case. Furthermore, we have been unable to find any rule of the Agreement which prohibits the use of a deferred system of discipline.

In the instant case Carrier could have given Claimant an actual five day suspension for his offense, and Petitioner would have had no cause for complaint. Instead, apparently because of Claimant's good record and his request for leniency, Carrier chose to defer actual suspension. We find nothing in this action calculated to prejudice the rights of Claimant. He lost no time from the job and fared better than he would have under a harsher penalty. The type of discipline used appears to us an enlightened one and in no way contrary to the Agreement.

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

Thatt there was no violation of 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 15th day of March, 1963.