

Award No. 11324
Docket No. DC-13359

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 456

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 456 on the property of the Southern Pacific Railroad Company, for and on behalf of Waiter Charles Hughes, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss account of Carrier dismissing claimant from service on the 30th day of August, 1961, in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD: This is a discipline case. Claimant was dismissed from service on August 23, 1961. He was charged with the violation of the following Rules and Regulations and Service Instructions Governing Service by Dining Car, Coffee Shop Car, Cafe and Snack Car Waiters, effective October 1, 1953:

That portion of Rule 6-C reading:

"At station stops employes will remain on train unless required to detrain in connection with their duties . . ."

That portion of Rule G reading:

"The use of intoxicants or narcotics by employes subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty, is sufficient cause for dismissal . . ."

That portion of Rule O reading:

". . . or the entering into any activity not authorized by the company on company property is forbidden."

That portion of Rule S reading:

"Employes must not transport food or liquor owned by them on trains while on duty . . ."

That portion of Rule 802 reading:

“ . . . Boisterous, profane, or vulgar language is forbidden . . . ”

There is no question that Claimant detrained at Reno, Nevada, on August 23, 1961. The record is clear and not disputed. It is true that other dining car waiters detrained at the same time and were not apprehended, nor were they disciplined. But this is no defense nor justification for Claimant's violation of Rule 6-C.

The record also clearly establishes the fact that Claimant had in his possession a six pack carton of beer in violation of Rule S.

Whether or not he was also guilty of violating the other Rules is immaterial and of little consequence in view of Claimant's clear violation of Rules 6-C and Rule S.

It is argued on behalf of the Employee that because Claimant had nineteen years of service the penalty of discharge is too severe. Several Awards of this Board were cited. None of them are applicable to this case.

In Award 10930, with the same Referee, we sustained the discharge of an employee with sixteen years of service who had previously not been disciplined. We said in that Award:

“ . . . this Board reinstated the employee either because the evidence was insufficient to support the penalty, or that the employee did not violate any Rule, or because of procedural defects. These elements do not exist in this case.”

These elements also do not exist in the case at hand.

It is a well established principle of this Board that a disciplinary action will not be set aside unless the Carrier was arbitrary, vindictive or acted in bad faith. It is also the position of this Board that we cannot substitute our judgment for the Carrier. Awards 11017 (Dolnick), 10642 (LaBelle), 10595 and 10596 (Hall).

We see no justification to interfere with Carrier's action and to set aside the dismissal or modify the penalty.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.