# Award No. 11721
# Docket No. DC-11249

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Levi M. Hall, Referee**

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## PARTIES TO DISPUTE:

## JOINT COUNCIL DINING CAR EMPLOYEES UNION, LOCAL 372

## UNION PACIFIC RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Union, Local 372, on the property of Union Pacific Railroad Company, for and on behalf of Chef Eddie Stevens that he be paid seven and one-half days time between the dates July 7 to July 13, inclusive, account Carrier holding claimant out of service in violation of Agreement.

**OPINION OF BOARD:** Claimant, herein, Eddie Stevens, was employed by Carrier as a chef in the Dining Car and Hotel Department. On July 2, 1958, Claimant was working as a chef on Dining Car 4608 — Passenger Train No. 34. Steward Hooper was assigned to and in charge of that diner. There was an altercation between Claimant and Steward Hooper and, on July 2, the Steward filed a written report with Carrier's Superintendent at Ogden, Utah, regarding deficiencies in the service of the Claimant as well as suggesting that his conduct was unco-operative and insubordinate. Claimant reported for service on July 3, 1958, but was taken out of the service at that time and held out of service until July 14, 1958. It is Claimant's contention that he was not apprised of the reason for his withdrawal from service on July 3, that no charges have ever been preferred against him and that the present case is not a discipline case, that the grievance of the Claimant was presented to the Carrier within sixty days from the date of its occurrence, that he has not been granted a hearing, that the Agreement has been violated and he is entitled to 7½ days pay for the time he was kept out of the service.

Rule 27 (f) reads, as follows:

> "(f) Other grievances or claims not presented within sixty days from the date of occurrence, will be considered closed and not subject to further appeal or consideration."

Carrier contends that at the time of Claimant's withdrawal from the service he was notified to report to the Superintendent but neglected to do

so until July 8 when he reported at the Superintendent's office with the Local Chairman and a conference was held; that, at that time he was apprised of what the complaints against him were, was told that it had been the intention of the Carrier to dismiss him from the service but because of the length of his service with the Company he would be given another chance, if he would agree to co-operate; that he was told by the Superintendent, he would have to be transferred to another crew assigned to duty on July 14 and would receive no compensation for lost time. It is the position of the Carrier that this is **a discipline case,** that no claim for compensation for lost time for Claimant Stevens was made until July 23, nor was any request made for a hearing until August 2, 1958. It is the contention of the Carrier that Rule 27 (a) applies, that no request for a hearing on the charges preferred was made within ten days from the date charges were preferred and, in compliance with the Agreement, the case must be considered closed and no claim may thereafter be made.

Rule 27 (a) of the Agreement is, as follows:

> "Rule 27. Discipline and Grievances. (a) When an employe who has acquired an employment relation is dismissed or otherwise disciplined, he will be apprised of the precise charge against him, and upon written request, if made within ten days from date charges are preferred, will be granted a hearing by the district supervisor. If written request for hearing is not made within such ten day period the case will be considered closed and no claim may thereafter be made."

The primary question presented here for consideration is as to whether or not this is **a discipline case.** It has been uniformly recognized that an employer may discipline employes if it becomes necessary to a proper conduct of the service. See Awards 10595, 10571, 9864, 9033 and 8495 among others.

There is nothing in this Agreement that requires that any charge that the Carrier makes against an employe must be in writing, nor is there anything in the Agreement which prevents suspension of the employe under proper circumstances. The Record quite clearly demonstrates that on July 8, 1958, Claimant was advised by the Superintendent as to the precise complaints made against him. It is not disputed that he was told that he would be removed from the crew he was then on and would be transferred to another crew commencing work on July 14 but would be paid nothing for the time lost. As this case will be disposed of other than on the merits, whether or not the Petitioner or Claimant acquiesced in this proposal is not important. Ordinarily, an element of discipline is that some punishment or reprimand is applied as a restrictive measure — in the instant matter Claimant was transferred out of his regular crew, told to report for duty on another crew at a later date and advised he would not be compensated for any time lost. Further, that this is a discipline case was recognized in letters from the General Chairman in which the following language was used — "In view of the circumstances surrounding this particular claim and action taken in **administering discipline** . . ." and, also, "District Chairman . . . submitted claim . . . **account of discipline.**" (Emphasis supplied.)

It appearing from the Record that Claimant was apprised of the precise charges made against him and discipline applied on July 8, 1958, and it further appearing that no request for hearing on the charges was made until August 2, 1958, 25 days later, and Rule 27 (a) of the Effective Agreement

between the parties provides, **"If written request for hearing is not made within such ten day period the case will be considered closed and no claim thereafter be made"**, we must conclude that, by Claimant's failure to request a hearing within ten days as required by the Agreement, the case was closed on the property and the claim cannot be sustained here.

**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

Under Rule 27 (a) of the Agreement the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.