

Award No. 11996
Docket No. PM-13894

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: . . . for and in behalf of Marsel Garden, who is now, and for some years past has been, employed by the Chicago, Rock Island and Pacific Railroad Company as a sleeping car porter operating out of Chicago, Illinois.

Because the Chicago, Rock Island and Pacific Railroad Company did, through Superintendent M. H. Bonesteel, take disciplinary action against Porter Garden by giving him an actual suspension of fifteen (15) days from the service without pay, which action was based upon charges which were not proved and was therefore arbitrary, unjust, unreasonable, and in abuse of the Company's discretion.

And further, because Porter Garden did not have a fair and impartial hearing as is required under the rules and regulations of the Agreement governing the class of employees of which Porter Garden is a part.

And further, for the record of Porter Garden to be cleared of the charge in this case, and for him to be reimbursed for the fifteen days pay he lost as a result of this unreasonable and unjust action.

OPINION OF BOARD: There is no dispute between the parties as to the facts in the instant case. The Claimant, a sleeping car porter, is entitled to purchase food on a reduced cost basis. On the day in question the Claimant went to the dining car where he met waiter Kohlman. It is part of a dining car waiter's compensation that he receives meals free of charge. Kohlman had received a chicken dinner of which he had eaten some of the food. He gave what was left to the Claimant.

The Carrier points to Rule "N" which provides that the receipt of a meal without a meal check or any remittance being made therefor deprives the Carrier of revenue.

On the above state of facts the Carrier penalized the Claimant by suspending him from service for 15 days.

At the point where waiter Kohlman received a dinner, which was part of his compensation, the said dinner became the property of Kohlman. When he elected to give what was left of the dinner to the Claimant, instead of throwing it away, it is impossible to see how the acceptance of this food constitutes a violation of the Agreement. The gravamen of the offense is dishonesty. The act of the Claimant was not dishonest.

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 Carrier's contention that Claimant violated its Rule "N" is not correct and, therefore, the penalty must be set aside.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.