

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: *Request for the reinstatement of former Dining Car Steward A. J. Cole, with seniority and vacation rights unimpaired, and pay for each day, at the dining car steward's rate, when not permitted to perform service as a dining car steward.*

OPINION OF BOARD: This is a discipline case in which the charge against the Claimant is based practically entirely on a letter addressed to William J. Quinn, President, Milwaukee Road, by one Lorraine B. Perrin, a passenger, in which she contends that she boarded Carrier's train at Chicago at 1:40 P.M. for transportation to Milwaukee, entering the diner with a "bag, slightly larger than a brief case"; that the steward (the Claimant) "imperiously" declared that luggage was not permitted in the diner and insisted that she take her bag ahead to a coach, leave it, and then return to the diner for lunch. She accused Claimant of being an "officious and unpleasant employee" and of being a "hair-splitting gauleiter."

The Claimant, at the hearing, admitted that a lady had entered the diner, that she had a bag larger than a brief case, that he requested her to leave her bag in the coach ahead, which was, in fact, the dome car, and to then return to the diner. It was his testimony that it was a customary practice to request passengers to remove bags larger than brief cases from the diner to other coaches and to then return to the diner for service. In this statement he was corroborated by two other stewards who testified at the hearing. (There is no denial in the record that this was a customary practice and it is conceded that there is no company rule against it.) The Claimant specifically denied that he was in any manner impolite, officious or unpleasant to any lady passenger.

The Carrier offered no corroboration of charges made in the passenger's letter, other than claimed admissions by the Claimant.

That Claimant was "an officious, unpleasant employee," that he "imperiously declared that luggage was not permitted" and that he was "a hair splitting gauleiter" were, at most, personal inferences, drawn by the pas-

senger from Claimant's alleged conduct. "When . . . opinion or inference is admitted, the inference amounts in force usually to nothing, unless it appears to be solidly based on satisfactory data"—Wigmore on Evidence. Third Edition, Volume VII, Sec. 1929. The only data we have before us on this record is the fact that passenger was asked to remove her bag to another coach.

In a comparable situation arising in Award 6067 (Wenke), which was a denial award, we note the following:

" . . . As to the incident of September 12, 1951, when Claimant was the Steward on Dining Car 3682, we think the evidence establishes nothing more than that of a complaining patron who was dissatisfied with the food she was served and who became more so when she discovered that she had made a mistake as to the price thereof. We do not think there is any evidence that establishes Claimant was guilty of the charges made against him in regard thereto."

Likewise in the instant matter we have an irate passenger with a prolific vocabulary whose sole purpose, we might well surmise, to have been to use the dining car just for transportation between Chicago and Milwaukee and who was upset because the steward requested her to move her bag to a coach ahead. We do not find that there is any competent evidence which establishes that Claimant was guilty of the charges made against him. Consequently, we must find that he was not afforded a fair and impartial investigation.

Attached to the Carrier's submission in the record is a company history of alleged misconduct on the part of the Claimant on a number of occasions which might well justify drastic discipline, but, under the rules, those charges were not then under investigation, and only where there is substantial evidence supporting a charge under investigation may the records of past complaints be invoked to justify drastic penalty. See Award 4684, Stone; Award 11130, Boyd; Award 11308, Miller.

It appears from the record that Claimant was employed by the Carrier as a waiter after his dismissal as a steward. Any wages he has received in that capacity shall be offset against any amount due him by this Award.

The dismissal of Claimant was in violation of the agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The dismissal of Claimant was in violation of the agreement.

AWARD

Claim sustained in accordance with the opinion.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1964.