

Award No. 12816
Docket No. DC-14578

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 Dining Car Steward K. F. Banghart, with seniority and vacation rights unimpaired, and pay for each day held out of service, November 3, 1963, and subsequent dates, when not permitted to work as a dining car steward, as a result of charges preferred against him by the Carrier.

OPINION OF BOARD: Claimant was employed by Carrier as a dining car steward, June 16, 1957, and was held out of service on November 3, 1963, pending completion of hearing on the following charges.

"1. It is charged that you violated the Carrier's rules with regard to the proper handling of meal checks on train 103 car 8002 October 11th and 12th, 1963, by permitting waiters, under your supervision, to take oral orders for meals on more than one occasion and for your failure to present all guests with meal checks, resulting in passenger complaint regarding this handling.

2. It is charged that as steward on train 3 from Chicago to Minneapolis November 3, 1963, during dinner that you violated the Carrier's rules by permitting the No. 1 and No. 2 waiters, under your supervision, to take oral orders from guests and that you failed to see that three guests had meal checks to cover their meals until arranged for by Dining Car Dept. Supervisors who boarded your car.

3. It is charged that your violations of the Carrier's rules with regard to the proper handling of meal checks occurred on these two trips following letter of instructions received from Supt. of D.C. Dept. Bulletin 3-101, dated October 3, 1963, which was delivered to you October 3, 1963, which was delivered to you October 10, 1963."

The hearing or investigation was held on November 8, 1963, and Carrier combined the separate charges into one investigation. On November 14, 1963,

Claimant received notice that the facts developed at the hearing disclosed his responsibility for all the charges made, and that he was dismissed from the employment of the Carrier.

Claimant contends that he was disciplined and dismissed without a fair and impartial investigation; that, with regard to the first charge, he was not furnished with the name of the alleged passenger nor was he afforded the opportunity of questioning him at the hearing or elsewhere; furthermore, with regard to the accusations made in the second charge, Carrier did not have the passengers present at the hearing who had signed statements which were received in evidence, that the Carrier did not have the members of the crew present to be examined and disclaims that he had any knowledge of waiters accepting oral orders from guests. Claimant acknowledged that he was familiar with Carrier's rules and instructions as to the handling of meal or guest checks; he further admitted that he was the top Supervisor and authority in the dining car, and that it was his duty to see that the instructions were carried out.

In support of the first charge against Claimant, the Carrier produced an unsigned letter, in which an unnamed passenger, allegedly a business man from Omaha, stated that he was enroute from Omaha to Los Angeles on a train on which Claimant was the dining car steward, and that at no time during the entire trip was he given a meal check on which to pay; that in every instance a waiter took his order verbally and at the conclusion of the meal the steward came to the table and advised him of the cost of the meal. Claimant flatly denied the charge made by the passenger. If what the passenger charged was substantiated, the conduct of the steward, the Claimant, constituted a violation of Carrier's rules and instructions. Use of letters as evidence is commonplace in hearings such as this. However, in support of the first charge, had there been only this letter or statement of an unnamed passenger, and nothing more, either an admission by the Claimant or other corroboration, we probably would be inclined to sustain Claimant's charge that there had not been a fair and impartial investigation.

Carrier had a right to consider all the evidence adduced at the hearing. The incident involved in the second charge occurred within less than a month of the first complaint; the charge of improper conduct on part of the steward (Claimant) was precisely of the same general nature as that made in the first charge. There was substantial evidence offered by witnesses, both verbally and by written, signed statements of passengers, to substantiate charges made by the Carrier. Claimant had the opportunity of cross examining the inspectors who were called by the Carrier. The Carrier had four cooks and four waiters present, members of Claimant's train crew, who the conducting officer advised he would hold at the hearing if Claimant wanted to interrogate them. It was for the Carrier in these proceedings to determine the credibility of the witnesses and the weight of the testimony submitted. We cannot substitute our judgment in that respect to that of the Carrier's.

It is evident from the entire record that Carrier was justified in finding Claimant guilty as charged. His was a position of trust. He was responsible for the acts of all dining car employees. While there has been no charge of dishonesty made against the Claimant, nor any charge against him of any conspiracy between the waiters, cooks and himself, the Carrier might well have drawn an inference that the irregularities in the service charged could not have occurred but for some understanding between the steward, the waiters, and the cooks.

Claimant has had more than six years of service on the Carrier's railroad. Prior to the time of these incidents, the record does not disclose any previous irregularities in his conduct warranting any reprimand or discipline. He was not specifically charged with any dishonesty nor any act of conspiracy. It also appears from the record that subsequent to the hearing, herein, the two waiters involved were disciplined, dismissed, and later returned to the service.

On the basis of the foregoing and all the facts in the record, we conclude that a dismissal from the service was an excessive penalty, arbitrary, and an abuse of discretion.

The following Awards are closely similar to the case now before us—Award 6104, Messmore; Award 12000, Dolnick.

Claimant has been out of the service for over eight months. This is an adequate penalty, under the circumstances. He should now be returned to the service with full seniority and vacation rights unimpaired, but with no compensation for lost time.

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

That the dismissal from service was an excessive penalty.

AWARD

Claim disposed of 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.