

Award No. 12997
Docket No. DC-14530

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: Claim of Dining Car Steward D. C. Fossett, for time lost, September 5, 1963, to and including September 14, 1963, on account being held out of service as a result of an investigation held on August 27, 1963.

OPINION OF BOARD: On July 30, 1963, Dining Car Steward D. C. Fossett, the Claimant, received the following notice from the Superintendent:

"July 30, 1963
File: 173-Fossett, D. C.-J-2

Mr. D. C. Fossett
758 W. Jackson
Chicago, Illinois

Dear Sir:

Charges are pending against you as Steward assigned to Train No. 104, July 5th and 6th, 1963, as follows:

1. For failure to properly perform your assigned duties as Steward, resulting in passenger complaint during dinner, July 5, 1963, and breakfast, July 6, 1963;

Hearing to determine your responsibility in connection with the above charges will be held in this office at 8:30 A.M. Central Standard Time Wednesday, August 7, 1963.

Yours very truly,

/s/ W. R. Jones
Superintendent"

A hearing was held on August 29, 1963. On September 4, 1963, Claimant was notified that he had been suspended for ten days, September 5, 1963, to and including September 14, 1963. Claimant contends that Carrier failed to give employe a fair and impartial investigation, as provided for in the Agreement.

At the hearing, on August 27, the only evidence submitted by Carrier was a letter signed by Helen L. See, which had never been seen by either Claimant nor his representative prior to the hearing. In this letter, her complaint as to the Claimant Fossett was as follows:

"The person in charge brought my water to the counter. . . . This person dressed in the black suit came back and asked me for my breakfast ticket. Well, he didn't give me one, then he accused me of having it in my purse. I didn't even have it made out for my breakfast. He was insulting, though he gave me a piece of paper to make out my breakfast to be ordered."

It appeared that the Superintendent had called Miss See on the telephone. To him, he alleges, she reiterated "that he was insulting in the manner in which he insisted she had a check." She did state that the piece of paper he finally handed her was a regulation check.

The Claimant at the hearing denied any misconduct or discourtesy on his part.

We have before us a situation similar to one presented to this Board in a recent award between these same parties, Award 12815, Hall.

The Carrier here, as in that case, offered no corroboration of the charge made in the passenger's letter. Carrier did offer a "memo" of an alleged conversation over the telephone between Helen See and the Superintendent. This was merely a reiteration of the original charge made in the letter, and could not in any respect be considered as corroborative.

The evidence presented established nothing more than that a complaining customer was unduly aroused because the steward had suggested to her that she might have misplaced her breakfast check. Her suggestion that he was insulting and discourteous to her constitutes nothing more than a conclusion on her part, which was not justified under the facts stated.

While conceding that in discipline cases letters may be used in establishing dereliction of duty on the part of the employe without producing the authors of such letters, still, when a single letter is offered in evidence based purely on inferences and conclusions without any corroborating evidence, and without any admission by the employe of any misconduct on his part, it is entitled to very little weight as evidence, and is insufficient to sustain a charge made against an employe.

For the foregoing reasons, we must find that the Claimant did not have a fair and impartial investigation as required by the Agreement and he was wrongfully withheld from service.

FINDINGS: The Third Division of the Adjustment Board, 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 Agreement was violated.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.