

Award No. 13613
Docket No. DC-14693

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Request of Dining Car Steward J. A. Vanderbeek, Northern District, for reinstatement with seniority unimpaired, and claim for compensation for all time lost as a result of being removed from service and subsequently dismissed on November 26, 1962, for alleged violation of that portion of Rule "G" reading:

"The use of intoxicants or narcotics by employees subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty, is sufficient cause of dismissal. . . ."

Dining Car 10209, Train No. 102, August 15, 1962.

OPINION OF BOARD: The Claimant in this case, Dining Car Steward Jacob Vanderbeek, was charged with violating Rule G; to-wit: using intoxicants while on duty and the possession of intoxicating liquor while on duty. *After a hearing on these charges, the Carrier determined that the Claimant was guilty of the accusations as charged, and ordered that he be dismissed from the service of the Company. Vanderbeek commenced his service as a Dining Car Steward on November 5, 1945 and had so worked until August 15, 1962, when he was suspended from service pending the investigation which resulted in the instant claim. The docket before us is silent as to his service record.*

Generally, we are inclined to examine the transcripts of these investigations in the following manner: (1) We look to see if there have been any procedural errors which would nullify the Carrier's actions, and (2) we examine the record to determine if there is evidence sufficient to substantiate the findings of the Carrier. In this regard, we do not weigh the evidence to determine if our decision would be the same as that reached by the Carrier, but, rather, we merely look to see if there is competent evidence in the record to warrant the decision made by the Carrier.

Since the claim presented to this Board is one in the nature of review, and not a trial de novo, we will now proceed to examine this record in accordance with the criteria mentioned above.

First, in regard to procedure. There is only one procedural error of any consequence raised by the Organization. This refers to the method of taking Claimant's testimony. The Carrier called the Claimant to testify, and his representative argued that he should not be required to testify until all of the evidence had been presented against the Claimant in the case. The Carrier denied the objection and instructed the Claimant to testify. Vanderbeek did testify, and he affirmatively denied each and every material allegation to which Carrier's previous witnesses had testified. We hold that when Claimant proceeded to give testimony, he waived his objection to the right of the Carrier to force him to testify. We find no other procedural defects in the course of this hearing which would be fatally defective to the decision of the Carrier.

We now come to an analysis of the second phase of our scope of review. Here we are concerned with whether or not Carrier has introduced evidence sufficient to substantiate the findings of the investigation. The Organization urges that we be persuaded by the fact that all ten members of the crew on the date in question testified in behalf of Claimant, and each stated that Vanderbeek was not under the influence of intoxicants; that he performed his duties in a normal and orderly fashion as usual, that his complexion was not "flushed" or that his voice was "thick" or that he "slurred" his words. As impressive as the defense of the Claimant is, we insist that we will not weigh the evidence presented during the investigation. We are concerned with the testimony of the witnesses called by the Carrier.

In addition to the Claimant, the Carrier called Dining Car Inspector Wolfrum, Assistant Trainmaster Napper, and Traveling Passenger Agent Chadsey. These three men testified that the steward was talking in a "loud voice", his face was "flushed", his voice was "thick", he "slurred" his words and that he told them he had been drinking while on duty. They further testified that they found a whiskey bottle in his locker, along with a glass, some ice, and some ginger ale. It was developed during their testimony that Claimant was not relieved of his duties until after the conclusion of the meal, and that he performed his job, and was busy all the time. It also is shown that there were at least two incidents which occurred during the meal which involved arguments between the inspector and the steward.

Based solely on the evidence submitted by the Carrier, we would have to say that the dismissal in this case is predicated on suspicion, surmise and circumstantial evidence wholly and totally uncorroborated. We feel that the action taken in this case is certainly that which would shock the conscience of this Board.

Therefore, it is the order of this Board that the Claimant be reinstated with seniority unimpaired and that he be compensated for all wages lost, save and except whatever amount he may have received during the pendency of this action.

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 Agreement was violated.

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 May 1965.