

Award No. 13672
Docket No. DC-14866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 582
SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 582, on the property of the Southern Pacific Railroad Company for and on behalf of Waiter Robert Boute, that he be returned to service with seniority and vacation rights unimpaired account of Carrier dismissing Claimant from service on January 25, 1962, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: Claimant, a waiter in Carrier's Dining Car Department, was dismissed on January 25, 1962, for mishandling meal checks while on duty on January 9, 1962.

This Board is satisfied that Claimant received a fair and impartial hearing within the meaning of the controlling Agreement prior to his dismissal. He had adequate and timely notification of the charges against him as well as fair opportunity to develop his case. While Carrier refused to advise Claimant of the evidence it intended to present at the hearing, he was able to cross-examine any witness whose oral or written evidence was used by the Carrier as a basis for its decision. We have been referred to no provision of the applicable Agreement that requires Carrier to produce such evidence prior to the hearing. Although Petitioner now asserts that the investigation was defective because Carrier did not have the steward and chef at the hearing, no request was made for these witnesses at the time of the hearing and neither the Petitioner nor Claimant asked that the hearing be recessed until those witnesses were produced.

As to the merits of the case, there is direct, specific and credible testimony by two of Carrier's inspectors that Claimant deliberately mishandled meal checks on several instances on the day in question. The charges appear to be substantiated by the evidence and we perceive no justification for disturbing Carrier's conclusions as to Claimant's misconduct and dismissal.

It is true that the steward on the same car was himself a party to somewhat similar misconduct, and had been dismissed by Carrier, but reinstated without back pay by this Board, mainly for the reason that his "work record over a period of more than nineteen years was without a blemish."

See Award 12000. Unlike the steward, Claimant's work record is not clear of blemish; he has accumulated fifty demerits, and on one prior occasion, was warned against mishandling meal checks. What Award 12000 had to say in the next to last paragraph of its Opinion regarding the Carrier's duty to produce additional witnesses is not in point pertinent here, since that case concerned a different Agreement containing witness requirements (its Rule 20 (b), e.g.) that are not provided for in the applicable Agreement.

In the light of the foregoing discussion, the present claim will be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1965.