

Award No. 13727
Docket No. DC-15119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 516, on the property of the Great Northern Railway Company, for and on behalf of Waiter Ernest Johnson, that he be compensated for net wage loss from September 15, 1963 through October 14, 1963 account of Carrier suspending Claimant from service during this time in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD: This claim arose from the suspension of Dining Car Waiter Ernest Johnson, Jr. from service for 30 days for insubordination. On September 15, 1963, the circumstances giving rise to the suspension were as follows: A couple requested two orders of ala carte ham from Waiter Johnson. Through error he was given "table d' hote" orders of ham by the chef, which he proceeded to serve to the guests. The Steward, P. O. Christopher, noticed the error, and asked Mr. Johnson to return the incorrect orders to the kitchen. A dispute then arose between the Steward and Mr. Johnson, which led to Mr. Johnson's removal from service when the train arrived at Fargo, North Dakota, on September 15, 1963. In a letter dated September 19, 1963, Mr. Johnson was notified to appear at the Office of the General Superintendent-Dining Car at 9:30 A.M. on September 25, 1963 for a formal investigation of the incident. A hearing was conducted which resulted in his suspension from service for 30 days, September 15 through October 14, 1963.

Mr. Johnson claims compensation for time lost during suspension on the grounds that Carrier failed to give him proper notice of hearing in accordance with Rule 21, which requires that "notice of such investigation stating the known circumstances involved will be given to the employee." He also contends "that any rule violations that may have taken place are directly traceable to the provocative action of the Steward."

Carrier takes the position that the notice was adequate and satisfied the requirements of Rule 21. It further asserts that the evidence adduced at the hearing justified the suspension.

In respect to the contention that the notice of investigation did not set forth the "known circumstances" as required by Rule 21, we find that Car-

rier's letter of September 19, 1963, included such significant information as the date and place of the occurrence, the rules violated, and reference to Claimant's conduct which had necessitated his removal from service at Fargo. Claimant was, therefore, adequately apprised of the nature of the charges so that he could prepare his defense. Moreover, the hearing indicates that he was not taken by surprise when the charges were presented.

As for Claimant's contentions that his behavior was traceable to the provocative acts of the Steward, we note that Claimant disregarded instructions by his Supervisor to return the incorrect ham orders to the kitchen, proceeded to the kitchen, where, confronted by the Steward, he lit a cigarette, violating a rule in doing so, and demonstrated a defiant attitude by shaking his finger in the Steward's face. In his testimony he explained that he went to the kitchen without the ham orders because he was already carrying a tray of dirty dishes, and that his conduct was incited by the arrogant and dictatorial attitude of the Steward. These explanations do not relieve him of the responsibility to obey the rules, follow instructions, and respect the authority of his Supervisor, all of which are necessary to insure efficient and courteous service to the patrons in the coffee shop car. Under Rule B of the Rules and Instructions for dining car employes, if any employe feels he is being treated unfairly, he has recourse through a written report covering the nature of his Complaint to the proper officer. He must, however, continue to follow his instructions until his tour of duty is completed. We find that the hearing was fair and proper, and that Carrier's suspension of Claimant from service was not arbitrary and capricious, and was in accordance with the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and 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 of the parties 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 13th day of July 1965.