# Award No. 14069
# Docket No. DC-15607

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Murray M. Rohman, Referee

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## PARTIES TO DISPUTE:

## JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

## CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Porter-Waiter John Q. Oliver, that he be restored to service and compensated for net wage loss, with seniority and vacation rights unimpaired, account of Carrier dismissing Claimant from service on October 29, 1964, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: On August 29 and 30, 1964, the Claimant was assigned as Porter-Waiter to hamburger grill car 410, Train No. 4, Los Angeles to El Paso, Texas. In this capacity, one of his duties was to serve miniature bottles of liquor to the passengers. Subsequently, a negative report was received by the Carrier from two special operatives who were passengers on said train.

The substance of said report revealed that four other passengers had ordered miniature bottles of Four Roses Bourbon, and upon consuming a portion, vociferously complained about the inferior quality of the liquor served. This prompted the special officers to request similar drinks from the Claimant. They were allegedly served miniature bottles bearing the label of Four Roses, which were opened at the bar, and brought to them uncapped. Upon sipping a portion, their suspicions were confirmed that the Claimant had tampered with the contents.

Upon receipt of said report, the Carrier instituted a check of the Claimant's bar supply book covering the trip in question. It was then ascertained that the Claimant's records failed to denote a single sale of Four Roses Whiskey.

The Claimant was charged with violating Rule N of the General Notice and General Rules, in that he failed to remit any revenue to the Carrier for the sale of these tiems. Insofar as pertinent herein, Rule N provides as follows:

> "Employes who are . . . dishonest . . . will not be retained in the service."

Thereafter an investigation was held on the property and on October 29, 1964, the Claimant was dismissed from service. Throughout the progress of

the hearing, as well as before this Board, the Organization has tenaciously argued for a reversal of said termination on the ground that the hearing was unfair and prejudicial to the Claimant's rights. The premise for this position was based upon the refusal of the Carrier to honor the Organization's request for a copy of the report upon which the charge was based, as well as the names of the witnesses who were expected to testify at the investigation.

This contention lacks merit. The effective Agreement between the parties does not provide for such pre-hearing inspection, and absent a specific proviso to that effect, we will not direct otherwise. Furthermore, the Railway Labor Act has not empowered this Board to write new rules nor to inject new provisions into existing rules. We are confined to the interpretation of existing rules, as set forth in Section 3 of the said Act. The Claimant was not prejudiced, inasmuch as the two passengers who submitted adverse reports testified at the hearing, and were cross-examined. This is the ultimate protection that can be accorded a defendant even in a court of law — the right to be confronted by his accusers and to cross-examine them in open hearing. On previous occasions, we have emphatically spoken out on this precise issue and have consistently rejected this Organization's identical dogmatic thrust. (See Awards 13397 and 13670.)

We have steadfastly adhered to the principle that an employe is entitled to a hearing which accords him the right of cross-examination and to be afforded the opportunity to present witnesses in his behalf. In the instant dispute, such requirement was met and the facts elicited at the hearing, prima facie, substantially supported the Carrier's action. We find no basis in the record to warrant a reversal.

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 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 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 30th day of December 1965.