



Award No. 15049
Docket No. DC-16152

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370
THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 370 on the property of the New York Central Railroad Company, for and on behalf of Chef Jay B. Brooks, that he be compensated for all time lost from September 21, 1965 to October 21, 1965, account of Carrier suspending Claimant from service during this time in violation of the Agreement.

OPINION OF BOARD: Claimant is employed as Chef cook by the Carrier. He entered service as third cook June 21, 1932, and obtained his present position of Chef, March 23, 1936. Claimant was on his regularly scheduled layover day July 23, 1965. On this day, Claimant entered the kitchen of the dining car on Train No. 15, prior to its leaving Grand Central Terminal on its scheduled run. Claimant allegedly was on the train to visit the Chef assigned to No. 15, who was also Claimant's Local Chairman.

While on board the train and in the kitchen, it is alleged that Claimant was cursing and talking in a loud voice. Inspector Fields told Claimant to quit hollering and yelling. Claimant, it is alleged, told the Inspector "he was going to yell and holler until the day he died", and followed this with an obscene remark. Claimant then left the train. Approximately three minutes later, Inspector Fields encountered Claimant still within the track gate of the station platform, and asked him "what was the matter." Allegedly at this meeting, Claimant made an obscene remark and announced that Inspector Fields "was going to respect him."

Under date of August 18, 1965, Claimant was notified by Carrier that he was to report for a hearing on August 25, 1965, concerning a charge that on July 23, 1965, he had been insubordinate to Inspector Fields. Hearing was held and in letter dated September 3, 1965, Carrier advised Claimant he was suspended from service for thirty (30) days. Claimant was duly represented at the hearing by his attorney and the General Chairman, Local 370, Dining Car Employees Union. Carrier's Hearing Officer was the Supervisor of Personnel.

It is the position of the Organization that Claimant could not and did not receive a fair and impartial trial; that the evidence adduced failed to

establish that Claimant was insubordinate under the circumstances; and that Claimant was in an off-duty status; thereby, Carrier did not have jurisdiction in this proceeding.

The Board has made a very careful review and study of the voluminous record and transcript of the hearing and finds that though the evidence is controverted, there is substantial evidence of probative value to support the Hearing Officer's disciplinary action. Nowhere do we find upon examination of the Record that Claimant was not accorded a fair and impartial hearing or do we find that the Hearing Officer was biased or prejudicial or abused his power in assessing the penalty. There is substantial evidence in the record to justify his conclusion. Such contention by the Organization is not supported in the record. See Awards 11443 (Dolnick) (involving the instant parties to this dispute); 12738 (Coburn), 14197 (Seff), 14357 (Ives), among others that are applicable here.

As to the contention that Claimant was not an employe on the day in question and Carrier had no right to institute disciplinary proceedings against him, is without merit and contrary to the holdings of this Board.

Many awards of this Board have held that even though an employe is not on duty, or on a day off, and his misconduct occurs on Company property, the employment relationship with Carrier still exists. An employe is obligated to conduct himself properly, to accept and recognize authority, and to comply with instructions given in the line of duty — when he is on Company property. He may not, while on said property, indulge in whatever misconduct he so chooses and then attempt to cloak himself with immunity from discipline on the grounds he was not on duty at the time.

The Board does not wish to imply that the Carrier has a right to control the conduct of an employe in his private life. What an employe does on his days off, when he is off the property of the Carrier, does not warrant or justify discipline, so long as his conduct does not interfere with his work.

Here, the Claimant was on Company property, and was guilty of refusing to recognize or have respect for Inspector Fields' authority. Carrier did have jurisdiction of the Claimant as the employment relationship existed and it did not abuse its discretion in assessing disciplinary action.

We conclude that the evidence supports the charge of insubordination and the discipline imposed was not unjust, unreasonable, or arbitrary.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1966.