



Award No. 15180  
Docket No. DC-15860

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward A. Lynch, 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 Waiter-In-Charge Theodore Thomas, that he be compensated for net wage loss account of Carrier suspending Claimant from service on June 21, 1965 for ninety (90) days and applying a final warning against Claimant's record, in violation of the Agreement between the parties and in abuse of its discretion.

**OPINION OF BOARD:** We have reviewed the record before us, including the 99 pages of transcript of Carrier's hearing on the property.

Claimant was suspended from service for 90 days, and a "final warning" was entered in his record.

In discipline cases we never substitute our judgment for that of management unless there is evidence that in the exercise of its right to discipline Carrier has acted in an arbitrary or capricious manner.

Two passengers filed the complaint against the Claimant. Claimant did not know, at the time of the incident on the train, they were station auditors in the employ of this Carrier. They filed the charges against him. Both of them admitted to drinking intoxicating liquor in Syracuse before boarding the train, and of having more drinks — how many, they did not know — in a bedroom of the train. This was before they entered the dining car, seeking more drinks, and before the incidents leading to the charges and Claimant's suspension from service.

We find no fault with Carrier's suspension of the Claimant on the basis of the record with respect to regulations on menu and meal check presentations.

In the light of the situation facing the Claimant — two men under the influence of liquor — to whatever extent, and seeking more, the penalty of final warning on this Claimant's record is an arbitrary exercise of its disciplinary rights. We direct it be removed.

**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 violated in accordance with the Opinion.

#### AWARD

Claim sustained in accordance with and to the extent indicated in the Opinion. Claim for wage loss denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.