

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES
(Local 351)**

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Grand Trunk Western Railroad, for and on behalf of E. L. Barabino, Waiter, that he be returned to service with vacation and seniority rights unimpaired and compensated for net wage loss since May 10, 1966, account of Carrier dismissing Claimant from service on that date in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: After an investigation held on April 8, 1966, E. L. Barabino, Waiter, was dismissed from service on April 15, 1966, for insubordination to the Dining Car Steward, for refusal to serve passengers, and for demanding a tip from a passenger on December 24, 1965.

On April 20, 1966, the General Chairman of Brotherhood appealed the decision with the request that Mr. Barabino be returned to service with seniority rights unimpaired. Carrier denied the appeal, stating that the investigation supported the charge and justified the disciplinary action of dismissal. After a conference between representatives of the parties in May, 1966 in which Carrier reaffirmed its decision, Brotherhood presented its claim to this Board.

Carrier asks that the claim be dismissed on the grounds that the claim before this Board is not the same claim that was progressed or appealed on the property. It also submits that the charges were substantiated by the evidence developed at the investigation held on April 9, 1966.

In examining the contention that the claim is not properly before this Board, we find that the General Chairman on April 20, 1966 appealed the dismissal decision of Carrier with the request that Mr. Barabino be returned to service with seniority rights unimpaired. The record further supports the fact that until this dispute was presented to the Board, it was progressed on the property only on the basis of restoration to service with seniority rights unimpaired. The instant claim for the first time includes a request for vacation rights unimpaired and monetary compensation for wages lost since May 10, 1966. Thus, the claim was amended substantially from that on the property. Since Brotherhood failed to comply with Section 3, First (i) of the Railway Labor Act, as amended, the claim is not properly before this Board.

Since the claim was not handled in the usual manner as prescribed under the Railway Labor Act, we are compelled to dismiss it.

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 claim is dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.