

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****John J. McGovern, Referee**

PARTIES TO DISPUTE:**JOINT COUNCIL DINING CAR EMPLOYEES****NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 354 on the property of the Norfolk and Western Railroad Company, for and on behalf of Waiter Joseph Crenchaw, that he be restored to service and compensated for net wage loss, with seniority and vacation rights unimpaired since May 19, 1967, account of carrier dismissing claimant from service on this date in violation of the Agreement between the parties hereto.

OPINION OF BOARD: The Claimant in this case, a Dining Car Waiter, failed to protect his assignment on April 28, 1967. A formal investigation was held on May 17, 1967, the result of which was ultimate dismissal from the services of the Carrier.

On January 21, 1966, Claimant had signed a letter addressed to the appropriate officer of the Carrier, in which he stated that inasmuch as this (Meaning an offense similar to the instant charge) was the sixth such offense on his record, any future infractions of rules and regulations, reporting late, conduct unbecoming etc., would result in his immediate resignation without benefit of an investigation.

Despite the contents of the above cited letter, Carrier did in fact proceed with a formal investigation. The evidence adduced proved conclusively that the Claimant failed to protect his assignment on the date indicated. The discipline imposed, dismissal, was based upon the prior record of the Claimant. If this were in fact Claimant's first offense, we would be inclined to agree that dismissal was too harsh a penalty to inflict. However, when considered in conjunction with his prior record, Carrier was justified in its action. We will deny the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 by the Carrier.

AWARD

Claim denied.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 18th day of April 1968.