



Award No. 16315
Docket No. DC-17098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Dining Car Department)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, on the property of the Atchison, Topeka & Santa Fe Railway Company, for and on behalf of Waiter Booker T. Turner, that he be returned to service and compensated for net wage loss, with seniority and vacation rights unimpaired since September 22, 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 a formal hearing, Booker T. Turner, a dining car waiter, was discharged from service on September 27, 1966, on the charges that on July 18, 1966, while working on Dining Car 1489 Train No. 19, he left his post of duty to interfere with Traveling Supervisor Chef Curtis Jefferson's instructions which did not concern him, used vulgar language which could be heard by the passengers in the dining car, and was insubordinate to Mr. Jefferson.

Claim is made by the Brotherhood on behalf of Mr. Turner that he was improperly dismissed because Carrier failed to give him a fair and impartial hearing inasmuch as the hearing officer considered Mr. Turner's past record during the investigation. This party also takes the position that the penalty of dismissal was an excessive abuse of Carrier's discretion and a violation of the Agreement.

Carrier denies Petitioner's claim for reinstatement with the assertions that Mr. Turner was afforded a fair and impartial trial, that the charges were proven, and that the discipline was not unreasonable or unjust considering his proven guilt and past record.

A review of the transcript of the investigation substantiates the findings that Mr. Turner left his post to involve himself in a conversation between the Supervising Chef and the Chef about slices of tomato and onion that were omitted from deluxe hamburger orders. The hamburger orders were not to be served by Waiter Turner, and the instructions were not directed to him, but Mr. Turner took it upon himself to make statements in profane language about company policy in a voice loud enough to be heard by passengers. Chef Supervisor Jefferson's testimony to this effect was corroborated by Dining Car Steward J. E. Johnson, who witnessed the incident.

With reference to the contention that it was improper for Carrier to review Claimant's service record during the investigation, we find the use of such information to determine the measure of discipline to assess is valid. We are satisfied that Claimant's past record did not influence the decision of guilt. The conduct of the investigation did not abrogate Claimant's procedural or substantive rights. There was substantial evidence to support the charges. For these reasons, we find no valid basis for substituting this Board's judgment for that of Carrier's in the disciplinary penalty assessed.

In view of the findings of proven guilt and a service record of a number of suspensions, reinstatements on leniency basis, reprimands for tardiness to work, arrogant attitude, and resentment of correction by supervisors, we hold that the discipline assessed was not arbitrary, capricious, or excessive.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.