



Award No. 16354
Docket No. PM-17107

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: For and in behalf of Clarence W. Babbs, who was formerly employed by the New York Central System as a sleeping-lounge car attendant.

Because the New York Central System did finally, through a decision rendered by Mr. I. L. Austin, Manager Dining and Sleeping Car Service, under date of January 23, 1967, sustain a disciplinary action taken against Mr. Babbs by Mr. Scavarelli, Superintendent of Labor Relations, Dining and Sleeping Car Department, under date of December 21, 1966, wherein Mr. Babbs was dismissed from his position as sleeping-lounge car attendant allegedly because of four (4) charges that had been made against him previous thereto.

And, further, because the charges against this employe were not proved and the action of the New York Central System in discharging him was unjust, unfair, arbitrary and in abuse of the carrier's discretionary power.

And, further, for Mr. Clarence W. Babbs to be returned to his former position as a sleeping-lounge car attendant with the New York Central System with seniority rights, vacation rights and all other rights incidental to this position unimpaired, and with pay for whatever wages were lost by him as a result of the carrier's unjust and unreasonable action.

OPINION OF BOARD: This is a disciplinary case wherein Claimant, for an alleged infraction of the Rules of the Carrier, was, after due notice and a fair and impartial hearing, dismissed.

We, as has been said in many awards emanating from this Board, assume the posture of an Appellate forum. As such we do not weigh the evidence presented at the hearing, nor do we adjudge the credibility of the witnesses. We review the record to ensure its fairness, its impartiality, its affordance to the accused of the right of confrontation with his accuser, the right to cross-examine his accuser and all other hostile witnesses, together with all other elemental prerequisites for a fair and impartial hearing. We find that such was granted to the accused in this case. Further, the evidence is sufficiently

substantial to support the charges. We cannot say that the Carrier was in any way arbitrary, capricious or lacking in good faith. Carrier considered the past record of the accused, and properly considered it only in measuring and determining the penalty to be made. It was not used in an attempt to strengthen its case on the charges which are the subject of this opinion. In deference to his prior record, and the evidence presented at the hearing, Carrier was justified in dismissing the Claimant. We will, accordingly, deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 24th day of May 1968.