

Award No. 18563

Docket No. DC-19110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

**NORFOLK AND WESTERN RAILWAY COMPANY
JOINT COUNCIL OF DINING CAR EMPLOYEES
LOCAL 372**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council of Dining Car Employees, Local 372 on the property of the Union Pacific Railroad Company for and on behalf of Leo J. Smith and Wilma Smith that they be reinstated to service and compensated for all time lost because of wrongful discharge by the Carrier.

OPINION OF BOARD: Leo J. Smith informed the Carrier on August 20, 1970 that he would not continue to perform his duties as Outfit Manager until certain complaints that he made were settled. Mr. Smith felt that the Carrier had breached the Agreement because locally hired gang members were not eating at the outfit. This resulted, by application of the Agreement, in lower earnings for Mr. Smith and his wife-helper. Mr. Smith also complained that the Carrier did not furnish adequate ice and fuel and the services of a Bull-Cook.

The record clearly shows a refusal by Mr. Smith to perform the duties of his position until the complaints he had made were heard. Although most cases dealing with such a refusal arise out of a situation in which the employee refuses to perform work he believes is not a proper assignment for him, the principle involved in such cases does not differ from this case.

An employee, except in circumstances not present here, is required to use the machinery set up to adjust his grievances instead of withdrawing his services. Many cases decided by this Board recognize this principle.

After hearing Mr. Smith's case on October 28, 1970, the Carrier by a letter dated November 3, 1970, agreed to reinstate Mr. Smith with seniority, but without back pay. Mr. Smith refused to accept re-instatement.

The claim will be dismissed.

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 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May, 1971.