NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20584
THIRD DIVISION Docket Number MS-20711

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Richard Peamon
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: That I was dismissed from an All Day lunch car attendant job on the Southern Pacific. I was fired because I supposedly was to have violated company's rules, rules that were never issued to me by the Company of Union or anyone else. The other waiter involved, J.E. MATTHEWS violated the same rules, but the company did not dismiss or discipline him in any form. Why? Because a young lady Miss Martzina did not make a written complaint about him like she did me. Matthew himself ordered a bottle of wine from me. Never at any time did I sell the young lady intoxicants at any time. The company, with its rules seems to be trying to frame me for the young lady having the wine. Tbe Southern Pacific Company contradicts its own rules because if Matthews, a crew member with more seniority than myself violated the company's rules by purchasing himself a bottle of wine from me and the company is aware of the same, but yet he was not disciplined. Two wrongs in any court do not make a right. However, my concern and dispute is not with Matthews as to whether or not he should be punished, that would not solve or help my problem, but however, he holds the key to show the impartiality of the company, towards its workers. I will admit to you as I did to the Southern Pacific Railroad that I did however hug the young lady around the shoulders once or twice but this was all in a playful manner when we first met and never did she object at anytime to me and this was all I put my hand on purposely. I also admit that I did ask her for a kiss, but this was all in fun when we were getting along well. As for my claim, I say once again that never was I given any rules or regulations governing the specific job that I had; orally or written. One railroad official stated concerning my case that I should have had "common sense" in the matter. This is true in a manner of speaking, but is common sense a prerequisite for governing the passengers and railroad property or is it the company's rules and regulations. This is my claim, but the decision is yours.

OPINION OF BOARD: Review of the record in this docket clearly shows that the claim Petitioner is attempting to assert before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Division and will be dismissed.

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.

That the claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.