

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

PROTECTIVE ORDER OF DINING CAR WAITERS—LOCAL #465
UNION PACIFIC RAILROAD COMPANY

DISPUTE.—

"Petitioner, Protective Order of Dining Car Waiters, Local #465, American Federation of Labor, claims that Waiter James G. Anderson was unjustifiably discharged from the service of respondent company because of his supposed violation of the company's rule against bringing intoxicating liquor aboard the train.

"Petitioner claims that the said rule of the company does not prohibit the bringing of liquor on the train for medicinal purposes, in an emergency, and since the facts disclose, beyond question, that it was for no other purpose that Waiter Anderson brought the liquor in question to the car, with the consent of the Steward, the respondent company should restore Waiter Anderson to the service, with full seniority rights, and reimburse him for his net wage loss.

EMPLOYEES' STATEMENT OF FACTS AND POSITION.—

"Your petitioner, Protective Order of Dining Car Waiters, Local #465, American Federation of Labor, respectfully sets forth that it is the duly designated, authorized, and recognized representative of the Dining Car Waiters employed by the Union Pacific Railroad Company, under the provisions of the amendment of the Railway Labor Act; that on the 16th day of January, 1936, James G. Anderson, a member of said Local #465, American Federation of Labor, was employed by the Union Pacific Railroad Company, the respondent, as a dining car waiter; that at the conclusion of his trip on the said 16th day of January, 1936, he was dismissed from the service because of a report that he had brought liquor aboard the train at Cheyenne, Wyoming, contrary to the rules of the company.

"The circumstances surrounding the possession and bringing aboard of the liquor by Waiter Anderson are clear and undisputed. They are briefly these: On January 16, 1936, prior to arrival time of Train 17 at Cheyenne, Wyoming, Waiter Anderson was requested by Waiter Curtis Grimmatt, who had become very ill enroute, to purchase a bottle of '666', some Bromo Quinine and also one-half pint of Cream of Kentucky Whiskey, at Cheyenne, so that he could take a portion of same and go to bed in the dormitory car immediately upon leaving. Waiter Grimmatt gave Waiter Anderson Three (\$3.00) Dollars, to make the purchase. Waiter Anderson, before the train arrived at Cheyenne, informed his steward, Mr. Innocent, of the physical condition and the request of Waiter Grimmatt, and asked him (Mr. Innocent) whether it would be all right to get the whiskey. Mr. Innocent told Waiter Anderson that it would be all right but advised him to hurry back.

"Prior to this conversation Steward Innocent had given Waiter Anderson some money to deliver at the ticket office in Cheyenne. When the train arrived at Cheyenne, Waiter Anderson went to the ticket office and left the money entrusted to him by Steward Innocent and then proceeded to the drug store across the street from the depot to make the purchase for Waiter Grimmatt. He bought a bottle of '666', some Bromo Quinine

further hearing conducted at the request of the district chairman of Local 465, on May 15, 1936, is attached.

"Waiter Anderson has not at any time denied the charge of possession of liquor while on duty, in violation of department rule above quoted. Request for reinstatement made by him following his removal from service was entirely on basis of leniency. Request for reinstatement with pay for time lost was first presented in his behalf by the representative of the Dining Car Waiters Local. In this appeal in Anderson's behalf it was not claimed that he did not violate the department rule, but that he did not violate any rule 'willfully.'

"It is alleged that the steward authorized the purchase of the whiskey. The steward in a statement made to the Dining Car Department supervisor at Portland upon arrival at that point on January 17th states:

'While enroute from Omaha to Portland on train 17 date, Waiter Curtiss Grimmert having a pain in the side of his face asked Waiter J. Anderson if he would get him a bottle of three sixes when we arrived at Cheyenne. Anderson asked permission of me to go across the street at Cheyenne for the medicine, which I gave him, asking him to remit for me at the same time at the ticket office, which he did. When he went into the drug store he got the said three sixes, also a small bottle of whisky, which he said he got for Grimmert for medicinal purposes.'

"The steward's statement does not support the allegation that he authorized the purchase by the waiter of a bottle of whiskey, and it is obvious to practical men familiar with railroad operation that no responsible railroad employe would authorize an employe under his supervision on a train to purchase and bring on to the train a bottle of whiskey. Waiter Anderson knew the rule, as anyone with the slightest familiarity with railroad service does, that the possession or use of intoxicating liquor while on duty on trains is prohibited, and sufficient cause for dismissal.

"It is a fact that Waiter Grimmert was ill and was finally obliged to leave the train at Pocatello, but whiskey is not administered to employes on trains while on duty.

"The possession or use of intoxicants by employes is hazardous to the safety of other employes and the traveling public, any exception to the rule pertaining to the use or possession of intoxicants by employes on trains is unthinkable."

OPINION OF BOARD.—The rule which Waiter Anderson was alleged to have violated reads as follows:

"The personal use of or possession of intoxicating liquor on duty, in sleeping quarters, or on Company property is prohibited, and will be grounds for dismissal."

The language of the rule is clear. It provides that either the personal use or the possession of intoxicating liquor on Company property will be grounds for dismissal. Granting all that is claimed by the employe herein, there is nothing in the language of this rule that could aid him. There is no exception made where the possession of liquor is for the use of a fellow worker, even though such use is intended to be medicinal. In view of this fact it is doubtful whether even the claimed consent of the steward would excuse the obtaining of liquor. There is no reason to think that such rule could be waived by another employe, such as the steward under whom Waiter Anderson served.

There is no claim that the rule which is here concerned was not well known to the employe. In fact, it is quite clear that he was aware of this rule.

The facts admitted by the employes show a violation of the rule as it now stands. While it is true that the facts in this case are such as to warrant leniency and that the disciplinary action taken was harsh, this is not ground for disturbing the conclusion of the management as to the proper action to be taken. The rule as it now stands has been violated.

Moreover the control by the employer over the employe is a matter which should not be interfered with in the absence of clear abuse of discretion; and this board should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer.

We can find no ground for disturbing the conclusion of the management.

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 employe involved in this dispute are respectively carrier and employe 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 a careful examination of all the evidence discloses no adequate grounds substantive or procedural for disturbing the disciplinary action of the management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Ill., this 22nd day of April, 1937.