

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim for reinstatement of Luther E. Thompson, Dining Car Chef, C. & N. W. Railway, and compensation for time lost as a result of dismissal November 2, 1938, based on Rule 19 of Dining Car Stewards, Chefs, and Cooks Agreement."

STATEMENT OF FACTS: The Board finds the facts necessary to the disposition of this case which it will make to be as follows:

That Luther E. Thompson was a Chef-Cook, assigned to Cafe Car 7353, operating on Trains 516 and 517 between Chicago, Illinois and Madison, Wisconsin. On October 28, 1938, Thompson was relieved from duty, charged with intoxication or being under the influence of liquor, and an extra chef-cook was placed on the run. Thompson was ordered to report to the office of Assistant Superintendent of Dining Cars immediately for investigation. He did not report until some three and one-half hours later, at which time he was questioned by the Assistant Superintendent of Dining Cars. Subsequently, on November 2, 1938, a communication was addressed to Thompson, notifying him that he was dismissed from the service of the company for reporting for duty in an intoxicated condition.

There is an Agreement existing between the parties effective March 1, 1938, covering working conditions, rates of pay, etc, Rule 19 of which reads:

"Employees will not be suspended nor dismissed from service until after a fair and impartial investigation has been held. Investigation will be held within ten days from date of alleged offense, or after information of the alleged offense has reached the superintendent dining and parlor cars, and decision will be rendered within five days after investigation. Men will be notified prior to investigation that a charge is pending and nature thereof, and will have the right to have a representative of their choice present at investigations. They may also bring in such witnesses as they desire to give testimony. The right of appeal in the regular order of succession up to and inclusive of the highest officer designated by the railway company to whom appeal may be made is recognized. If final decision is in favor of the man his record will be cleared of the charge, and if held out of service or dismissed he will be reinstated and compensated for wage loss, if any, suffered by him. Such compensation will be the amount he would have earned less compensation received in other employment."

POSITION OF THE PARTIES: The contention of the employees is that the questioning or hearing of Thompson before Assistant Superintendent of Dining Cars, immediately following Thompson's removal from service, did

not constitute a fair and impartial investigation as contemplated by Rule 19, in addition to which they adduce some evidence in refutation of the charge.

The carrier contends that Thompson was amenable to discipline for the offense with which he was charged, and that the request for reinstatement and compensation for lost time is not supported by Rule 19 or any other rule of the current Agreement. It also contends that Thompson was afforded a proper hearing as contemplated by Rule 19 on the afternoon of the day that he was charged with the offense. The carrier also adduces some evidence in support of the charge.

OPINION OF BOARD: In view of the disposition which the Board finds it necessary to make of this case, it deems it unnecessary to reproduce in extenso the separate statements of facts and positions of the parties.

In effect, the Board is asked to find that the carrier failed to comply with Rule 19, but also to find that the claimant was not guilty of the offense as charged. On the other hand, the respondent carrier, in effect, asks that the Board find that Rule 19 was complied with and that the claimant was guilty as charged.

As to the first of these questions the Board reaches a conclusion, but as to that, there are elements such as the action of the claimant between 12 o'clock noon, when he was directed to report at the office of the Assistant Superintendent of Dining Cars, and 3:30 P. M., when he was found sitting in the baggage concourse, at which time, upon further direction, he did report to the office, and for which no satisfactory explanation is given. Other elements prompting the Board in the course it takes with respect to this case need not be explored in detail further than to say that under the circumstances peculiar to this case the Board deems them sufficient to warrant, fully, the requirements herein imposed upon the parties.

With respect to the hearing in the office of the Assistant Superintendent of Dining Cars on the afternoon of October 28, 1938, the Board finds it deficient in many respects and not in consonance with Rule 19, which provides that the accused shall be notified prior to investigation of the charge pending and its nature; that he may bring in witnesses if he so desires to give testimony in his behalf, and shall have the right to have a representative of his choice present at the investigation. It does not appear that these opportunities were afforded Thompson at the hearing on the afternoon of October 28. He was asked whether he wanted a representative present, to which he replied that it was not necessary, but this formality cannot be deemed to be a waiver by him of his other rights under the rule.

In the light of the unusual circumstances presented by this case, the Board deems it proper to remand it to the parties, with the direction that the carrier now afford Thompson a fair and impartial investigation as contemplated by Rule 19. Further, such investigation shall be deemed to be in lieu of the investigation of October 28, 1938, and for the purpose of complying with these requirements the communication addressed by the carrier to Claimant Thompson under date of November 2, 1938, shall be deemed as of no effect and his status considered to be the same as at the time he was directed to report for hearing or investigation on October 28, 1938.

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 Claimant Thompson shall now be afforded a fair and impartial investigation as provided by Rule 19 and in accordance with the above Opinion, without prejudice of the right to resubmit the dispute if not adjusted by the parties.

AWARD

Case remanded to the parties in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1939.