

Award No. 2440

Docket No. DC-2248

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Howard A. Johnson, Referee

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 351, H. & R. E. B. I. L. of A., for and in behalf of Limmie Hodges for reinstatement with seniority unimpaired and compensation for wage loss because of wrongful discharge.

**OPINION OF BOARD:** The employe was suspended on September 19, 1942, on account of a charge of discourteous treatment of three persons in his lounge car on September 16th. On September 24th he was notified that his hearing would be held on October 2nd at Vicksburg; attention being called to the provision of Par. (b) of Article 25 that "employes may not be suspended to exceed 10 days pending investigation, unless investigation was delayed by the employes," Carrier paid him up to the 24th. While a point is now sought to be raised on that account, the employe and his representative waived any objection concerning it; furthermore, the rule against longer suspensions is obviously intended to prevent longer deprivation of earnings without investigation, and not to hasten the latter, promptness in which is insured by Par. (c) of the same Article. It provides that written notice of the charge shall be given to the employe within ten days after the Superintendent has information of the alleged offense; that the investigation, if desired, shall be held within ten days after the notice; and that "if investigation is not held within the time specified, no investigation or action shall be taken on the charge, except when the investigation is delayed at the request of the employes." There is no provision in Par. (b) that no investigation or action can be taken if the prior suspension exceeds ten days. The time originally set for the investigation was within ten days after the notice, it was at the request of the employe and his representative that a later time was set, and no complaint has been made that par. (c) of Article 25, which is the only provision relating to the time of hearing, was not complied with.

Objection is made that Division Superintendent Cunningham, whose wife was one of the ladies concerned in the complaint, in his letter informing the Superintendent of Dining Service of the incident, expressed his opinion that the employe should be discharged. However, at the hearing before the latter officer the statements of the witnesses showed that the employe had lost his temper and had spoken to them in an impolite manner because they had two or three times rung the call bell while he was serving or talking to a number of passengers at the bar of his lounge car. While the employe denied the incident he admitted that there was a complaint about the service and some conversation about the ringing of the bell.

The service record of the employe was placed in the record and shows a number of complaints and disciplinary action on various occasions, two of which were for insubordinate and rude conduct.

While aside from the employe's prior record the discipline imposed in this case would seem rather drastic, it is well settled by numerous awards of this Division, among them Awards Nos. 1297, 1310, 1497, 1848, 1996, 2069, 2376 and 2378, the Board should be reluctant to substitute its judgment for that of the management, and that discipline will not be disturbed unless the record discloses that it was imposed arbitrarily, without just cause, or in bad faith. There being nothing in the waived irregularities now complained of, to indicate that there was not just cause for the discipline or that it was imposed arbitrarily or in bad faith, the claim must be denied.

**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 there has been no violation of the agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois this 27th day of January, 1944.