

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD TRAINMEN
SEABOARD AIR LINE RAILWAY**

STATEMENT OF CLAIM: Claim of Dining Car Steward L. A. Kilian for reinstatement and pay for all time lost subsequent to May 1, 1943, date he was taken out of service.

OPINION OF BOARD: On April 8, 1943, the claimant was notified to report on the 15th for a hearing with respect to "irregularities in the handling of meal checks and Government meal orders" in the carrier's dining car service. During the hearing, commenced on the day named, the claimant requested a continuance in order to afford him an opportunity to be represented by a steward in good standing. The hearing was accordingly postponed until the 23rd and thereafter until the 30th, and finally concluded on May 1. The carrier sustained the charge and dismissed the claimant from service on May 18, 1943.

Several reasons are advanced as to why the claimant should be reinstated and compensated for lost time. One of these is that he was denied a fair hearing, in that the carrier, to establish its case, presented ten unverified written statements, signed by men in the armed forces and stationed at Ft. Jay, N. Y., thereby depriving the claimant of the right guaranteed by Article 9 of the effective agreement to "hear the evidence presented against him."

The record discloses that six of the statements above referred to were obtained eight days before the hearing started and four of them during the recess. It clearly appears that the claimant had no means of knowing the precise nature of the charges against him or the contents of the written statements until he was confronted with the latter at the hearing. The carrier admits in the record, also, that the evidence contained in these statements was essential to the establishment of its case.

In Docket No. DC-2587, Award No. 2613, we had occasion to consider the effect of denying a claimant the right to hear the evidence presented against him, under circumstances almost identical with those here presented, and what was there said applies with equal force to the case now before us. On the authority of that Award and for the reasons therein stated we hold, therefore, that the carrier violated Article 9 of the Agreement.

To meet the proposition here under consideration the carrier emphasizes the conclusive character of the evidence of the claimant's irregular conduct. Without expressing any opinion whatever upon that subject, we think it well to observe that it would be far better that a guilty employee should

occasionally go free, even to the extent of being reinstated and compensated for lost time, than that all employes should, by reason of an unsound precedent, be deprived of the safeguards of a fair hearing and the express provisions of the agreement be thereby abrogated.

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 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; and

That the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1944.