Award No. 2766
Docket No. DC-2766

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Ex parte submission of the Brotherhood of Railroad Trainmen in request of Dining Car Steward Harry E. Bock, Northern District, for reinstatement with seniority unimpaired and claim for net wage loss as a result of his dismissal from the service, March 6, 1944, for alleged violation of General Bulletin No. 101 and alleged insolence toward passengers, employes and Military Personnel, various dates and trains as specified in Mr. G. E. Mackinnon's letters of February 21 and 23, 1944.

OPINION OF BOARD: Dining Car Steward, Harry E. Bock, after a formal hearing was dismissed from the service of the Carrier for (1) failure to account for collections from patrons of dining cars in accordance with the provisions of General Bulletin No. 101, and, (2) for insolence toward patrons of dining cars.

The transcript of the record is voluminous and it would be a waste of time and space to relate the evidence in detail.

Preliminary to consideration of the case on its merits several arguments advanced by the claimant with regard to alleged irregularities in procedure authorized and required by Rule 20 must be considered.

It is first urged Section (a) was violated in that complainant was removed from service February 17, 1944, and his investigation was not held until February 28, 1944, eleven days later. The section reads:

> "When a Steward is taken from his run for investigation of an alleged offense, he shall, if found innocent, be paid for net wage loss. No discipline will be assessed without a thorough investigation; such investigation ordinarily to be held within five (5) days from date of removal from service."

In support of this contention we are cited to Award 7064, First Division, National Railroad Adjustment Board, with which we are familiar. The opinion has been re-examined but we do not find it decisive of our question. The award holds, and we are in accord, that under the rule the burden is on the carrier to hold the investigation within five days after the alleged offense is committed or show a valid reason why it could not properly be held within that period. It does not pretend to intimate an investigation cannot properly be held after the expiration of five days if the burden is sustained. The trouble with complainant's position here, conceding that irregularities complained of occurred as long as 41 days prior to the investigation, is that the record itself not only discloses their character was such as to require more than five days preliminary investigation to establish whether they could be

substantiated by competent testimony but also reveals direct evidence to the effect more than the ordinary or usual time was required to complete that action. Under such circumstances there is no violation of the spirit and intent of the rule.

It is next urged Section (d) was breached because two representatives of the Carrier, neither of whom was a clerk, were permitted to investigate the accused and another witness. This section provides:

> "Investigation of Stewards will be conducted and interrogations made by a designated representative of the Management. It will not be permissible for clerks to conduct investigations."

No objection was made at the initial and/or formal hearing to the procedure complained of and it is not pointed out how the complainant was prejudiced by the action. Without passing on the propriety of such procedure, since it was followed without objection and not indulged in over protest, we cannot say the irregularity, if any, justifies the imposition of a penalty which would preclude disposition of this case on its merits.

Another contention is that no charges were made with respect to failure to account for collections. Without laboring the question we hold this claim is not supported by the record. One notice charged failure to observe instructions issued to insure proper accounting for collections from patrons for meals served. It also stated the investigation covered irregularities on complainant's part on two trips, describing them. Such language fairly construed, by inference if not directly, charged failure to account for collections and was notice alleged conduct of that character would be one of the subjects of investigation.

Other contentions are all based on the premise the proof was insufficient to substantiate the charges. Heretofore we have indicated the evidence would not be detailed. However, we have examined it carefully. As to some of it a question exists as to its admissibility and it has been disregarded. As to other portions to which objection is made it was admissible but its character was such as to limit its force and effect. In our deliberation we have given it the weight to which it was entitled. When the entire record is thus reviewed it suffices to say it discloses admissions by complainant of repeated failure to comply with instructions to be found in Bulletin No. 101, promulgated for the purpose of insuring proper accounting for collections from patrons, and it reveals beyond doubt substantial competent testimony on the part of some witnesses which, if believed, would support the finding of failure to account for collections in accordance with provisions of the Bulletin as well as the finding of insolence toward patrons of dining cars. Reference to Awards 1989, 2613 and 2614 cited by complainant discloses they are not apropos here. This is not a case where reports of company investigators or unverified statements are solely relied on or absolutely essential to sustain charges of misconduct.

Once again we are impelled to say it is not our function to pass upon the credibility of witnesses or weigh the evidence and to reaffirm the doctrine, now well established by this Division, that if the evidence is substantial and supports the charges we will not substitute our judgment for that of the carrier or disturb its findings unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion.

With the evidence as we find it in our examination of the entire record it cannot be said the action of the respondent in dismissing the complainant from its service was arbitrary, capricious or without cause.

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 facts as they appear in the record do not disclose a situation which would justify this Board in modifying or revising the action taken by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of January, 1945.