

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 351, for and in behalf of Mr. Robert L. Gandy, waiter, to be returned to service with seniority rights accumulated and unbroken and with compensation to the extent he has suffered, retroactive to the date first held off duty, as a result of his unjust and unwarranted dismissal in abuse of the Carrier's discretion.

OPINION OF BOARD: In this discipline case, employe, a dining car waiter of five years service, concedes that he refused to obey a call for service on October 7, 1944 outside his regular assignment.

Additional diners were needed for service out of Chicago, some of them occasioned by a sudden notification of military and other movements. To properly man these cars, every available employe was called into service.

Employe attempts to justify his refusal of service by his belated claim (made for the first time at the hearing) that he was required to stay home and care for his four year old daughter until his wife returned from her employment. During the telephone conversation when he was called for service, employe does not claim to have mentioned anything about the child although he asserts that he was not given the opportunity to explain it. He concedes that he stated to Carrier's representative in that conversation that he was off duty and was not to go on his regular run until October 14, 1944. Carrier contends that he deliberately refused to respond to this call of extra service.

Employe complains of lack of time. He was called at 4:00 p.m. to report for duty at 7:45 p.m. This was an emergency situation and it was imperative that there be as little delay as possible. At the hearing employe stated that no one else was available to care for the child. His position would have been stronger had he shown that he attempted to secure someone else but failed in his efforts.

There is no claim here that Carrier did not have the right to call employe for this extra service. Employe's refusal to accept the call is based solely upon his claim that he had a justifiable excuse and that he didn't have sufficient notice because he was caring for his child.

Were we convinced that the record compelled that conclusion we would not hesitate in setting aside the action of the Carrier. However, from a careful examination of the record we believe Carrier was justified in concluding that employe's excuse was an afterthought and that he deliberately refused to obey the call into service.

We therefore conclude that there was no abuse of discretion.

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 Employees involved in this dispute are respectively carrier and employees 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 was no abuse of discretion on the part of Carrier in dismissing employee.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 21st day of December, 1945.