

Award No. 3149
Docket No. DC-3204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 495, for and in behalf of Mr. I. N. Faulkner, waiter in the Dining Car Department of the Norfolk and Western Railway Company that his record be cleared and he be compensated to the extent of wage loss for being held out of service, in violation of the current agreement and in abuse of the Carrier's discretion.

OPINION OF BOARD: This dispute arises out of an altercation between the Claimant, a Dining Car Waiter, and the Steward in charge of the Dining Car. Hearing was had after which Claimant was reprimanded and returned to service on probation without pay for time lost while held out of service pending investigation. Compensation lost amounted to \$29.02.

The Dining Car involved had a seating capacity of forty people, all of the seats being occupied just before the subject of the controversy arose. It appears that an occupant of a table assigned to Claimant left before the others. A lady passenger came in and seated herself in the vacant seat before the table had been made ready for further service. The Steward immediately cleared and made ready a table assigned to another waiter, which had been vacated, and invited the lady passenger to move to the reconditioned table which she did. Claimant, according to the testimony of the Steward, became incensed at the action of the Steward and engaged in the altercation forming the basis of the charge.

The record clearly shows that the Claimant and the Steward had an argument concerning the action of the Steward in moving the lady passenger to another table. It took place in the Diner in the presence of the passengers and Dining Car personnel. It is true that there was little evidence as to what was said other than that of the Claimant and the Steward. It is also true that there was much conflict in the testimony of the Claimant and the Steward.

The Steward was in charge of the Dining Car and its personnel. This, the claimant well knew. That the Steward could move a passenger from one table to another for the purpose of providing better service cannot be questioned. That he may do so without anticipating an argument with the waiters involved and the consequent annoyance of passengers cannot be gainsaid.

That there was an altercation is established by the record. The conversations leading up to it are in dispute. In other words, we have for decision a question of fact which has been determined adversely to the Claimant. We are committed to the rule that it is not a proper function of this Board to weight the evidence and if the evidence is such that, if believed, it supports

the findings of the Carrier, it will not be disturbed. Such is the situation here. The offense committed does not appear to have been great and the punishment imposed does not appear to have been unreasonable, excessive or incommensurate with the offense.

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 parties waived oral hearing hereon:

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 evidence is sufficient to sustain disciplinary action.

AWARD

Claim denied.

By Order of Third Division
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1946.