

Award No. 3183

Docket No. DC-3227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee.

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Pennsylvania Stewart Benjamin Kempler be reinstated and paid for all time lost from December 19th, 1944, for being dismissed on the alleged offense reading:

"While you were on duty as Steward on Train 568, Dining Car 4474, Friday, December 8th, 1944, you violated instructions contained in the pamphlet entitled 'Regulations Governing the Sale of Malt, Vinous and Spirituous Beverages in Pennsylvania Railroad Operated Dining, Cafe and Lounge Cars' issued Feb. 8, 1944, when you sold two individual bottles of liquor to patrons for out of car consumption; further you charged a price in excess of the ceiling price for the liquor requested."

Claimant was held out of service without a fair and impartial trial, disregarding Regulation 6-A-1 of agreement effective January 16th, 1936, and should be reinstated and paid in accordance with Rule 7-B-1.

OPINION OF BOARD: Except as to the extent of the discipline imposed, there is nothing to justify the charge that the claimant was not given a fair trial by the carrier. The evidence sustains the finding that he did commit the offense as charged; and we are frank to say that his position, in prosecuting his appeal to the railroad officials and in submitting his case to this Board, would have been stronger if he had frankly admitted his wrongdoing. But we think there is more to the matter than just that.

The claimant had been in the service of the railroad as a dining car steward for less than a year, during which time the record does not show anything adverse against him. It is undoubtedly necessary that the carrier should maintain, particularly in dining cars, investigators whose status is unknown to the employees. In no other way can a proper check be kept on the service, on whether food is properly served, on its quality, on the cleanliness of the car, on the courtesy of the waiters, and so on. Furthermore it is required that there be proper oversight of the manner in which stewards handle money and of their care for the stock on hand. It may be proper under certain conditions that temptation be put in the path of an employee, not to entrap him into the commission of a single offense, but to determine if generally he is conducting himself with a due regard to the responsibilities of his position and in accordance with the trust which has been reposed in him. Particularly the carrier has a responsibility with respect to the sale of intoxicating liquor to see to it that Federal and State statutes are complied with. In this instance, however, this steward was induced by agents of the carrier to commit an offense which but for undue persuasion he would not

have committed. What he did was done as a favor and the carrier does not claim that it was defrauded of any money. It is pretty clear that the money received was turned in to the carrier. There is no evidence that this violation disclosed any intent to continue an unlawful practice, and there is no suggestion that it was an incident of a practice which had been going on.

We think that there were very important mitigating circumstances here which should have been taken into consideration and that it was unreasonable not to have done so. Decisions in discipline cases are for the carrier to make. Only where there is no justification for the findings or when the penalty imposed is clearly unreasonable will this Board interfere.

Some discipline in this case was justified but it was altogether too harsh. In our opinion the Claimant should be reinstated but without back pay.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Claimant should be reinstated but without back pay.

AWARD

Claim sustained as above. Claimant ordered reinstated but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. J. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.