

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, for and in behalf of Mr. E. G. Sears, Dining Car Waiter, in the employ of the Grand Trunk Western Railway Lines, to have his record cleared of the charge of improper conduct, and to be reimbursed for 15 days' pay, as a result of unjust and unwarranted discipline in violation of the existing Agreement and in abuse of the Carrier's discretion.

OPINION OF BOARD: On February 26, 1944, Waiter E. G. Sears was assigned to Dining Car 1281 on Train No. 20. There was a second diner on the train which was soon to be set out of the train. The Stewards in charge of the two diners arranged for the first thirty guests to go to the second diner in order that it could be of service before it was cut out of the train. The Waiters in Dining Car 1281, of which Sears was one, resented the arrangement which resulted in some disturbance in the diner in the presence of passengers. Waiter Sears was notified to appear for investigation. The Carrier thereafter assessed discipline in the form of 30 demerit marks. The Organization contends that the discipline assessed was unwarranted under the evidence and asks to have the demerits removed from his record and that he be compensated for time lost.

The evidence produced at the investigation consists primarily of the oral interrogation of Sears and a number of written statements, letters and interrogations taken at an investigation discontinued with the one with which we are here dealing.

Claimant Sears denied every charge made against him when orally questioned. He admitted that he made objections to the Steward's action in directing the first thirty passengers to the second diner. That his objection was made in other than a proper manner is not shown by the record. This, standing alone, does not warrant the infliction of discipline.

The Carrier produced the ex parte statement of D. Gonzalez, the Steward in Dining Car No. 1281. Steward Gonzalez was not called nor was opportunity afforded Sears or his representatives to question him when the statement was made. The Carrier also produced the ex parte statement of Steward Waller who was in charge of the second diner. No opportunity was afforded Sears or his representatives to question this witness. Other statements produced were obtained subsequent to the investigation, had nothing in them pertaining to Sears, or contained matters only of opinion and matters foreign to the issues here presented. While we do not say that ex parte written statements may not be used at an investigation, we do not think the requirements of a fair hearing are met where no opportunity is given the one charged to question any witness to the event affording the basis of

the charge. Unless this be true, the provisions of the Agreement providing for a fair and impartial hearing and the presence of representatives who will be permitted to question witnesses becomes meaningless.

We think the evidence is insufficient to prove any misconduct on the part of Sears. The record is burdened with statements containing the opinions of signatories thereto and of matters not produced at the investigation. From an examination of the competent proof, we are unable to determine just what Sears did that warrants the assessment of discipline. Such proof is insufficient to sustain a charge. An affirmative award is required.

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 no violation of rules requiring the imposition of discipline is established by the record.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 10th day of July, 1946.