

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 495, on the property of the Norfolk and Western Railway Company, for and in behalf of Walter Guy H. Beale to have his record cleared of the discipline imposed upon him by suspension of nineteen days, and for compensation to the extent he has suffered, resulting from violation of the discipline rules of the current agreement.

OPINION OF BOARD: The Claimant here, a Dining Car Walter, was disciplined for insubordination to the Dining Car Steward. Claimant asks that his record be cleared and that he be compensated for time lost.

The event out of which the investigation arose occurred on February 18, 1945. The Steward made no report of the incident. Claimant preferred charges against the Steward for threatening bodily harm and for threatening to throw Claimant from the Dining Car. Claimant asked for an impartial investigation with the result that the Carrier charged him with insubordination. Following the investigation charges were sustained and the discipline was imposed.

We review the record of the investigation subject to the established rule that "it is not the function of this Board to weigh conflicting evidence in a discipline case and if the evidence is such that, if believed, it will support the findings of the carrier, the judgment of the carrier will not be disturbed".

It is the contention of the Claimant that insubordination is not shown. At the opening of the hearing Claimant's representative stated that "we understand that" the Dining Car Steward "is in complete charge of the Dining Car and is responsible for the proper operation of the Dining Car". The Steward testified that he called Claimant's attention to performance of his duties on the previous trip and asked him to bring the checks to him (the Steward) when the passenger had finished his meal and that Claimant refused. Words were exchanged. Claimant was asked to leave the car. He refused and a Special Agent was called to put him off. Claimant testified that he was instructed "to come up here to the Steward's end of the car, and bring your checks as soon as the passengers check out". Claimant then challenged the Steward's performance of his (Steward's) duties and said, "I don't think we should have to look all over the car for you". He (Steward) said "You will either look for me or get off the dam car". Claimant said, "I don't have to look for you and I don't have to get off". The testimony accordingly shows two acts of insubordination admitted by the Claimant. The record thus fully sustains the findings made by the Carrier. The Steward was not on trial and we make no findings as to the charges against him and none are to be inferred. But the fact, if true, that the Steward may not have been doing his

job in accord with the requirements of the Carrier or the liking of the Claimant is not a defense to, or an excuse for, the Claimant's insubordination. Neither is the fact, if true, that the Steward used profane language an excuse or a defense. The language, if used, was provoked by the Claimant's insubordination. It was the duty of the Claimant to obey the instructions given. His refusal to do so, which he admits, is the insubordination.

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 thereon;

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 the record fully sustains the finding made by the Carrier at the conclusion of the investigation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.