

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of Mr. R. C. Hunter, to have his record cleared of the charges for which he was held off duty during the period July 11 through August 10, 1945, and in addition thereto, reimbursement for Pullman fare between Chicago and New York, on two round trips, and hotel expenses incurred while at New York as a result of Carrier's violation of the current agreement, particularly the discipline rules thereof.

OPINION OF BOARD: The chief issues in this dispute narrow down to the single question whether Carrier rendered any decision imposing punitive measures upon Claimant after investigation and hearing had been duly held.

On July 11, 1945, Claimant was suspended from work pending investigation, was charged with neglect of duty and other infractions, and was given a hearing with his representative present. At the hearing his own testimony was sufficient, we find, to sustain the principal charge of unreasonable delay in preparing food for service at the time required. While the record shows criticism of the steps taken prior to the hearing and of the hearing itself, we will confine our discussion to the real dispute.

At the conclusion of the hearing on August 6th, Claimant was advised he could return to service on the next trip his run was due out on August 10th, which he did.

Claimant contends no decision either oral or written was rendered by Carrier. It is apparently conceded no decision in writing was rendered. Under the rules a decision in writing need be made only if requested, and there is no claim one was requested in this case.

Certainly, however, the proper administration of the rules of discipline require that a decision be rendered.

Carrier's position is that its oral decision punishing Claimant by holding him off duty from July 12th to August 9th was rendered at the close of the investigation, and that Claimant and his representative fully understood that such was the decision given.

Claimant's answer is a denial. However, his course of conduct subsequent to the hearing tends to confirm Carrier's position. Claimant resumed work on August 10th. At the next pay day Claimant received no pay for the time he was held off duty. Six more pay days followed with the same

failure. Under the rules an employe found blameless must be compensated for any loss while held off duty. Yet Claimant made no protest, nor even any inquiry. This would not be natural for a man who believed he had been acquitted. He ignored his sad plight until Nov. 29th when, through his representative, he asserted for the first time he had never been advised of any decision depriving him of his pay for the period held off duty. It does not seem credible to us that anyone really ignorant of the verdict would wait that long before asking what the score was, especially where it considerably affected his own personal fortunes, and where he was the person on trial.

Claimant's conduct accords with Carrier's position that a decision was given at the close of the investigation, and compels our conclusion that such was the fact, and Claimant had knowledge of it. Since an appeal must be taken within thirty days, Claimant's action on November 29th, more than three months later, was out of time.

The agreement has no provision allowing Claimant Pullman fare and hotel expenses while attending a hearing of charges against himself.

The claim must be denied in its entirety.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Carrier has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of March, 1947.