Award No. 3635
Docket No. DC-3638

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES, CIO

BANGOR AND AROOSTOOK RAILROAD COMPANY

STATEMENT OF CLAIM: On behalf of Dining Car Employes S. A. Peters, F. G. Gonzales, Sidney Guerrero, Calle Duque, who were discharged on September 22, 1946, without a trial and in violation of Rule 10 of an existing agreement.

This claim is for reinstatement of these employes, with seniority unimpaired, and pay for time lost as a result of this action.

OPINION OF BOARD: Carrier has a total of eleven dining car employes. During 1946 it was persuaded to the belief that cash being received in its dining cars was being misappropriated. An investigation was instituted that finally, on September 22, 1946, resulted in asking all the eleven employes to come to the office of the passenger traffic manager where each of the employes was asked to explain certain irregularities that had theretofore been uncovered by the investigation. Seven of the employes were returned to duty after explanations. The remaining four, claimants here, either admitted incidents of irregularities or were unable to explain shortages and irregularities as mistakes or otherwise. Letters of resignation of each of the four claimants were thereupon tendered by them and accepted by the Carrier.

Claimants urge that they were not accorded a fair trial as provided for by Rule 10 of the agreement, which says:

> "Employes will not be disciplined or dismissed for any offense without a fair trial, and when disciplined or dismissed if he considers that an injustice has been done him he will, within ten days, have the right to appeal to the general passenger agent, and will be represented by a member of the committee of his organization and will be given a hearing with ten days. In the event of the investigation not ending satisfactorily, it will be his privilege to take the matter to the next higher officer. If the investigation finds the accused blameless his record will remain as previous thereto and he will receive pay for all time off."

and further complain that the resignations were given under duress.

Considering whether claimants were dismissed under Rule 10 and were done an injustice thereby, we find they were granted an appeal to the successor in office of the general passenger agent, at which time they were represented by two members of the committee of their organization, at a date fixed by the international president of the organization, who, together with an international vice-president were the two representatives of the organization who appeared in their behalf. That investigation not ending satisfactorily to claimants they exercised their right to take the matter

to the next higher Carrier officer. After agreeing upon a date, a vice-president of Carrier, who was the next higher officer, together with the traffic manager and general auditor, met with the international vice-president of claimants' organization as claimants' representative.

At neither of these meetings did claimants' representatives offer to submit any proof of claimants' innocence, nor did they ask for further or additional hearing upon the merits of the case, but contented themselves with demanding a reinstatement of the claimants, claiming, only, that they had been dismissed in the first instance without a fair trial. Carrier's vice president declined to re-employ any of the claimants.

Upon such record Rule 10 is fully complied with. These claimants were accorded every privilege provided by the rule. If they had facts or circumstances to show that they were not dealt with fairly when they were first dismissed from service—if it was dismissal—they were afforded two opportunities to disclose such. This they failed to do. Having granted every hearing provided for by the rule, and having no syllable of proof of an unfair trial, Carrier vice president did the thing he would be required to do under the circumstances in refusing to re-employ claimants.

If it be considered that claimants were not discharged but resigned, then the question of duress in the procurement of the resignation becomes pertinent.

Examining that question we have the undisputed fact that irregularities were being committed in the dining car department; that all eleven dining car employes were questioned concerning that situation; that seven employes were immediately returned to service; that these four employes admitted various degrees of guilt. Under such circumstances what duress could possibly be employed to force a resignation? After a confession of guilt, dismissal under Rule 10 was quite in order and need for a forced resignation was certainly not present. Even if Carrier representatives told claimants that no publicity would be given to their defalcations in the event of their resignation, as claimed for by claimants, such statements would be consideration for them rather than coercion of them.

We find no merit in the case.

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 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 no rule of the agreement is violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.