

Award No. 3732

Docket No. DC-3735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN RAILWAY SYSTEM

STATEMENT OF CLAIM: Claim of Dining Car Steward G. P. Ruppenthal that he should be reinstated with seniority unimpaired and that he be paid for all time lost as result of being removed from service, October 2, 1945, for alleged irregularities in handling his accounts.

OPINION OF BOARD: The Organization presented the claim of Dining Car Steward G. P. Ruppenthal that he should be reinstated with seniority unimpaired and that he be paid for all time lost as a result of his "being removed from service, October 2, 1945, for alleged irregularities in handling his accounts".

On October 2, 1945, Claimant was met at end of his run in Atlanta, Georgia, and taken directly to office of Superintendent of Dining Cars where he was accused of various irregularities in handling of his accounts, including failure to account for all receipts at end of each run and shortage in his change account. Several officials were present at the time and made affidavits supporting statement of Manager of Dining Cars that at that time he told Claimant it would be necessary to hold him out of service pending formal investigation which would be held as soon as final audit of his accounts had been completed; and that Claimant then and there admitted that he was guilty of the charges and stated that he did not desire a formal hearing.

On October 6th, the Superintendent wrote the Claimant as follows:

"Because of irregularities in handling your accounts and reports, with which you are familiar, the Bonding Company declined to act as further surety in your behalf and has cancelled your bond.

"Accordingly you are removed from further service."

On the same day Claimant was asked to turn in his pass and master key. Two days later Claimant's run was bulletined.

On October 11, 1945, the Superintendent of Dining Cars wrote Claimant the following letter:

"Referring to my letter of October 6 in which you were suspended from further service account Bonding Company having cancelled your bond because of irregularities in handling your accounts and reports.

"In conversation between Mr. Kusch and yourself in my office October 2, during which I was present you stated you did not desire a hearing in the matter. Unless it is your intention to waive investigation and intend to resign you are hereby notified to report at the office of Mr. W. F. Kusch, Room 230, Southern Railway Building, Washington, D. C., at 10:30 A. M. on Tuesday, October 16, 1945 for a hearing on the matter.

"You may bring with you such representatives or witnesses as you may desire."

This offer of a hearing was declined by Claimant in a letter in which he denied that he had stated on October 2nd, that he did not want a hearing at a later date. In that letter he cited the Superintendent's letter of October 6th, and the fact that his run had been bulletined as proof that he had been "fired" and for that reason declined the investigation on October 16th.

On November 19th, Mr. Kusch, Manager of Dining Cars wrote a long letter to Mr. Roberts, Chairman, setting out the position of the Carrier. On February 14th, 1946, Roberts wrote Kusch requesting the restoration of the Claimant to service. In his answer to this letter, February 18th, Kusch said, "I am, of course, still willing to give Mr. Ruppenthal an investigation".

After further correspondence Roberts wrote Kusch on July 22, 1946, as follows:

"At conference your office June 17th the matter of hearing for Dining Car Steward Ruppenthal was discussed at which time you agreed that this man was entitled to such hearing, and I also understood you would furnish him transportation to attend such conference.

"I have requested conference to begin with Mr. Travis between August 1st and 5th, and would be glad to have Mr. Ruppenthal in together with Chairman Bernhardt at the same time, and if for any reason Mr. Travis is not in position to grant request for conferences as above outlined, we request that Mr. Ruppenthal's hearing be set for that time, a definite date between August 1st and 5th to be furnished you next few days."

By letter of July 25, Kusch answered Roberts as follows:

"This will acknowledge receipt of your letter of July 22nd, requesting that an investigation be given Mr. G. P. Ruppenthal sometime between August 1 and 5, the exact date to be suggested by you in a few days.

"I recall that when you discussed this case with me informally on June 17, you asked me whether I would be willing to give Mr. Ruppenthal an investigation and I pointed out to you that an investigation in connection with the charges against him, which were fully explained to him by me personally at Atlanta on October 2, 1945 has been offered several times, but, to date, Mr. Ruppenthal had refused to attend an investigation, contending he had been discharged from the service in violation of the agreement and you yourself had written me to the same effect. I told you I was still willing to give him the investigation. You informed me that you were not thoroughly familiar with the case and intended to look into it further.

"I understand from the request for investigation, which you now make, that the contention previously made by Mr. Ruppenthal, Local Chairman Bernhardt and you is being withdrawn and you desire me to give him the investigation offered by Mr. Thomas in his letter to Mr. Ruppenthal dated October 11, 1945, in connection with the charge against him of shortage and other irregularities and

the manipulations of his accounts, as a result of which the Bonding Company terminated his bond. This is to advise you I shall be glad to give him such investigation any time during the first half of August, except Saturdays and Sundays, that you desire. Please let me know what date you desire. If you will have Mr. Ruppenthal call on Mr. Thomas, he will provide him necessary transportation."

After further conferences and exchange of wires Kusch wired Roberts August 8th as follows:

"Wires exchanged. Necessary that I have definite advice stating whether you desire investigation Ruppenthal case be conducted August 14th basis my letter July 25th in order that can make advance arrangement for several witnesses from Atlanta to be present. Answer."

Roberts answered the same day as follows:

"Your wires. We request hearing in Ruppenthal case. You may summons witness and call the hearing anything you like. I have arranged for our people to be there August 14th."

Pursuant to the understanding shown by these wires, the Carrier brought its witnesses from Atlanta, Georgia, for the hearing. The Claimant and various members of the Organization were also present.

The members of the Organization then explained that they would not participate in the investigation "due to the fact that Mr. Ruppenthal was taken out of service and in fact discharged". Mr. Hart further explained that he thought the Claimant "has been discharged from the Company by virtue of Mr. Thomas' letter of October 6th."

Rule 9 of the Agreement provides:

"An employe in service for more than sixty days will not be disciplined without a fair hearing by a proper officer of the Company. Suspension pending a hearing, which shall be prompt, shall not be deemed a violation of this principle."

The Organization from the time this claim was first presented to the Company has insisted that the Claimant was "fired" by the letter of Superintendent Thomas of October 6th, in which he said, "you are removed from further service", and that since Claimant was "fired" without a fair hearing he need not thereafter submit to an investigation but must be restored to service and paid for all time lost.

On the other hand, Mr. Kusch, Manager Dining Cars, has insisted that on October 2nd, when he and other officials talked to Claimant, Claimant was told that he was being taken out of service until an audit of his accounts was completed and that he would then be given an investigation.

There was no denial of this until almost two years later, August 4, 1947, when a written statement, not verified, of Claimant was filed as an exhibit to Employes Rebuttal Brief. In that statement Claimant said Kusch told him on October 2, 1945, he was "fired". As between this belated statement of Claimant and statement of Kusch and Thomas made shortly after conference of October 2nd, it would seem only fair to accept the latter as giving the facts of the case.

There is no dispute that Claimant was offered an investigation by Thomas' letter of October 11th.

Considering Kusch's statement to Claimant on October 2nd, Thomas' letter of October 6th, after bonding company had cancelled Claimant's bond, and Thomas' letter of October 11th, offering an investigation and fixing a date therefor, it is difficult to find any justification for Claimant's thinking and contending that he was "fired" by Thomas' letter of October 2nd.

If he did actually so misconstrue the meaning of that letter his mind was promptly disabused by Thomas' letter of October 11th.

The Carrier was clearly within its rights under Rule 9 of the Agreement in taking Claimant out of service pending an investigation. Claimant suffered no loss by reason of his alleged misunderstanding of his status between October 6th and October 11th. He was not justified in declining the offered investigation. It necessarily follows that he was not justified in refusing to participate in the investigation which the Carrier and the Organization agreed to hold on August 14th, 1946.

Considering all of the record of this case, we cannot escape the conclusion that Claimant did not actually desire an investigation.

The Carrier was justified in asking Claimant to turn in his pass and master key while he was suspended from service.

The Carrier did not violate Rule 11 by bulletining Claimant's run.

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 the Carrier did not violate either Rule 9 or Rule 11 of the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.