Award No. 4002
Docket No. DC-3885

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 370, on the property of the Pennsylvania Railroad, for and in behalf of Mr. T. L. Noah, Coach Attendant to be returned to his position with seniority rights unbroken and compensated to the extent suffered as a result of the Carrier's action in removing him from his regular position on the "South Wind" without a fair and impartial trial. The Carrier violated Rule 6-A-1 of the current agreement.

OPINION OF BOARD: On March 17, 1944, Claimant T. L. Noah was assigned as a Coach Attendant on the South Wind, operating between Chicago, Illinois, and Miami, Florida. On October 21, 1946, Carrier disqualified Noah as a Coach Attendant and directed him to exercise his seniority as a Third Cook. This he failed to do. After due notice by registered mail, under date of November 23, 1946, to report to work on or before December 5, 1947, or be considered as having resigned, the Carrier on that day closed him out of service. On December 3, 1946, the Organization made claim on behalf of Noah that he should be returned to his position as Coach Attendant and be compensated for loss sustained. This was based on the failure of the Carrier to give Noah a fair and impartial trial before disqualifying him, as provided by Rule 6-A-1 of the Current Agreement. This rule, so far as applicable, provides:

> "(a) Employes who have been in service in excess of ninety (90) days, shall not be suspended or dismissed from service without a fair and impartial trial."

This record shows that after Noah was disqualified on October 21, 1946, he failed to exercise his seniority as a Third Cook. In fact, he failed to report for duty at any time. The Carrier formally notified him by registered mail to report on or before December 5, 1946, or he would be closed out of service. He did not report and was closed out. His failure to report under the circumstances is equivalent to a resignation as of the day he first failed to report for duty. Consequently, we hold that Noah resigned as of October 21, 1946.

When Noah elected to resign and leave the employment of the Carrier, he not only relieved himself of all responsibilities under the contract, but he relieved the Carrier of all duties towards him as well. When he filed his claim on December 3, 1946, there was no agreement between him and the Carrier. He had elected to terminate the Agreement by resignation rather than to comply with Carrier's directions and seek relief for the alleged contract violation under the Railway Labor Act. Award No. 3473. There is no basis for an affirmative award.

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 any claim for violation of the Agreement was voluntarily relinquished by claimant's resignation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.