Award No. 4051
Docket No. DC-3997

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

ILLINOIS CENTRAL SYSTEM

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 351 on the property of the Illinois Central System, that the Carrier has violated, and continues to violate Article 25 (b) of the current agreement by "dropping" Mr. Clifford Stratton from service without a fair and impartial hearing as provided in said rule, and that the Carrier shall, as a result of such violation be instructed to:—

(1) Return Mr. Clifford Stratton to service with seniority rights accumulated and unbroken, and—

(2) Compensate Mr. Clifford Stratton to the extent he has suffered.

OPINION OF BOARD: This claim is filed on behalf of Clifford Stratton, who first entered the employ of the carrier as a cook on February 21, 1924, and who held a seniority dating as a second cook, as of January 14, 1936, and as a chef as of January 17, 1938. On December 3, 1945, his name was dropped from the seniority roster, which was equivalent to a dismissal from service, without investigation, by reason of his absence without leave from service, and failure to return thereto after notice to do so. Giving to the claimant the benefit of the doubt, we are of the opinion that the case should have been treated as one of discipline, and covered by the provisions of paragraph (b) of Article 25 of the controlling Agreement, which reads:

> "Employes will not be dismissed from the service until after a fair and impartial investigation has been held."

The facts are in dispute. According to the statement of the carrier's Dining Car Inspector, Helmick, the claimant, on October 22, 1945, requested permission to take his annual vacation of 12 days, starting on that date, and, on account of need for cooks at that time such permission was reluctantly given, with the understanding that he would report for duty on November 3, following, and claimant was given a pass to New Orleans.

Claimant did not report for duty on November 3, 1945, and, after efforts were made to locate him by communicating with his wife, at his home, the following letter was addressed him at his home:

> "This is to inform you that we are now in need of your services as cook at Chicago, Illinois and unless you report for duty on or before December 2, 1945, you will be dropped from service and your name removed from our seniority roster."

Claimant not reporting for duty on or before the date specified, his name was dropped from the seniority roster of his craft, on December 3, 1945, on account of absence without permission. Claimant did report for duty on December 4, 1945.

So far as this docket discloses, the claimant has never made to the carrier any direct statement bearing upon his absence from duty. But in first presenting this claim on December 16, 1945, by Petitioner's Secretary-Treasurer, Thomas C. Edge, this statement was made:

> "Had an investigation been held in accordance with Article 25, of the present agreement, we would have been able to prove to your satisfaction that **Mr. Stratton** had requested of Inspector Helmick to be relieved from duty to visit a sick mother in the State of **Louisiana.** But at the time he was to be relieved, he was told that he could take his vacation and he was under the impression that while he was being relieved at his request, he could at the same time count part of this as a vacation and would be paid for part of the time that he would be off."

In another part of the docket it is stated that request for this leave of absence was made on October 28, 1945.

Inspector Helmick, referring to the vacation leave he says he granted on October 22, 1945, says:

> "At no time during my conversations with Stratton did he intimate he would not be back on November 3. Furthermore, there was never any mention made of a leave of absence; his request for time off in October 1945 was strictly on the basis of his pending annual vacation."

We thus have these conflicting statements on the facts involved. This Board has often held that it will not base its decisions on resolving a conflict in the evidence, and so it is that the contention of the claimant that he was granted an indefinite leave of absence at any time must be denied.

But was the claimant entitled to the investigation provided for in paragraph (b) of Article 25 of the Agreement? We think he was, and, also, that he has had such examination when a hearing on this case was held on December 14, 1945. On this phase of the case there does not appear to be any dispute on the facts. When claimant reported for work on December 4, 1945, and was told, in effect, that he had no job, he immediately began his efforts to have his position restored to him. On December 4, 1945, System Chairman Pryor requested that the action taken be rescinded, which request was refused. On December 8, 1945, the General Chairman verbally requested a hearing thereon, which request was granted, and a hearing held on December 14, 1945, at which hearing the claimant and System Chairman Pryor were present, as was Inspector Helmick. When this hearing was granted the effect was to suspend or hold in abeyance the action theretofore taken in the case, and, as we see the situation, claimant had the same opportunity to present his explanation of his absence as he would have had in an investigation held prior to his being dropped from the seniority roster.

There is no record of what transpired at this hearing. Claimant had the right to demand that such a record be kept, and, apparently did not do so. The main point to be stressed is that at this hearing on December 14, which was the equivalent of an investigation, the claimant had his opportunity to hear and be heard. The purpose of paragraph (b) of Article 25, was served, and the claimant cannot now say that his being finally dropped from the seniority roster, which was, in effect, a dismissal from service, on December 14, 1945, at the conclusion of the hearing on that day, constituted a violation of Article 25 of the Agreement. Article 25, paragraph (b) should be given a reasonable construction. The substance thereof is that an employe shall not be condemned unheard. It is the final action of the carrier which the Article seeks to limit. Here, treating the case as one of discipline, the carrier was

at fault when, in advance of an investigation, it, in effect, dismissed claimant from its service. On complaint being made of its action, it first refused to rescind it, but later, and within ten days, granted a hearing which was promptly held, at which claimant, supported by his System Chairman, was present, and where he had opportunity to present his case. On the conclusion of said hearing it was announced that the dropping of claimant's name from the seniority roster would stand. The case did not end there. Correspondence and conferences between carrier officials and representatives of the petitioner continued through most of the year 1946, and were not finally concluded until December 4, 1946. In view of this record, we are of the opinion that claimant was given a fair hearing, and, apparently, his case has received full, if not unusual, consideration.

Claimant's service record is brought into the case by the carrier. We cannot consider this record for any purpose other than on the penalty imposed. This record is not favorable to the claimant, and furnishes support for the severe penalty imposed. Aside from this record, there does not appear to have been any bad faith, action without just cause, arbitrary conduct on the part of the carrier, or prejudice or bias, such as would justify this Board in substituting its judgment for that of the carrier. See Award No. 3985 of this Division and numerous awards therein cited. On the whole, we are of the opinion that the claim should be denied.

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 there has been no violation of the Agreement.

AWARD

Claims (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.