

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Edward F. Carter, Referee**

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**PARTIES TO DISPUTE:**

**UNITED TRANSPORT SERVICE EMPLOYES**

**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim is filed on behalf of W. H. Duncan, dining car waiter. We claim that the facts surrounding the charge against Waiter Duncan would have not been developed and that his discharge was unjust and arbitrary and in direct violation of the provisions of Rule 24 of the existing agreement.

We further claim that the case should be remanded and the carrier instructed to abide by the provisions of Rule 24 of the existing agreement and conduct a proper investigation in the matter.

**OPINION OF BOARD:** Claimant was held out of service on account of improper conduct and insubordination to a superior. He demanded an investigation in accordance with Rule 24 (b), current Agreement, which provides:

"An employee who has actually performed service on more than one hundred and eighty (180) calendar days will in cases involving discipline or dismissal, be apprised of the charges against him in writing and will be accorded an investigation, provided he makes written request on the Superintendent of Dining Car Service within ten (10) days of the date of such discipline or dismissal. The investigation shall be held within ten (10) days after the date of receipt of request. The employee shall have reasonable opportunity to secure presence of necessary witnesses. The employee shall be present and may be represented by committee of Dining Car Local 351 or its representative. Decision will be rendered within ten (10) days after completion of investigation. If appeal is taken it shall be handled in accordance with Paragraph (a) of this rule. If it is found that an employee has been unjustly disciplined or dismissed from the service, he shall be reinstated with his seniority rights unimpaired and be compensated for wage lost, if any, suffered by him resulting from said discipline or dismissal, less any amount earned during such period of suspension or dismissal."

The record shows that Claimant requested an investigation on April 10, 1947. On the same date, the Carrier directed a letter to Claimant at 4046 South Parkway, Chicago, Illinois, advising him that an investigation would be held on April 14, 1947 at 2 P. M. On April 11, 1947, Carrier received Claimant's letter of April 10, 1947, showing his address to be 111 East 45th Street, Chicago, Illinois. Carrier immediately mailed a copy of its letter of April 10, 1947, giving notice of the investigation. On Sunday, April 13, 1947, Claimant called at Carrier's office to inquire about the investigation.

claiming he had received no notice by mail. He was thereupon personally advised of the day and hour that the investigation would be held and he stated that he would be present. On April 14, 1947, he appeared at the place where the investigation was to be held. He stated that he was to be represented by one Jones, a union representative. The investigation was delayed on account of the failure of Jones to arrive and the necessity for Claimant to contact union headquarters. The Carrier asserts that a union representative advised Carrier's investigating officer to proceed with the hearing and if they were dissatisfied with the hearing, they would appeal. This is denied by the Organization. As the investigation was about to proceed, Claimant walked out and did not return. The investigation was completed in his absence and resulted in Claimant being dismissed from the service. It is on this record that Claimant contends that he has been denied an investigation under Rule 24 (b).

It will be noted that the delay in the delivery of the notice of the investigation was due to changes of residence on the part of Claimant and his failure to advise the Carrier thereof. In any event, he received notice and appeared. His action in willfully refusing to participate in the investigation constitutes a waiver of all the objections here raised. His obligation was to proceed with the investigation and if it appeared that he was deprived of a fair and impartial hearing by prejudicial rulings of Carrier's investigating officer, the record could have been progressed on appeal and appropriate action taken before this Board. But one may not willfully refuse to participate in an investigation and then assert that he has been deprived of a fair and impartial hearing. Award 2554. No basis for an affirmative award exists.

**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 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

The Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois this 11th day of August, 1948.