

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local No. 354, on the property of the Missouri Pacific Lines, for and in behalf of Lindsey Anderson:

1. That he be compensated for ten days he was held out of service, resulting from his being assessed ten (10) days upon a charge—"attitude and demeanor when talking to Superintendent of Dining and Parlor Cars, and acting in a manner unbecoming an employe."
2. That his record be cleared of such charge.

OPINION OF BOARD: Reduced of all surplusage the record before us presents a case where a waiter with a dining car crew was held out of service for ten days for "acting in a manner unbecoming an employe." The Claimant had been called to the office of Carrier's Superintendent of Dining Cars for an interview concerning a complaint. In the course of the conference the Superintendent asked the Supervisor of Service as to what crew he could put the Claimant on, other than the one to which he had previously been assigned. The following colloquy ensued:

The Claimant: "Do I get paid for the time I am off?"

The Superintendent: "No, you do not, if you had acted right you should not lose any time."

The Claimant: "Then I demand an investigation."

The Superintendent: "That is just what I am talking to you about; you want to enter into an argument instead of taking instructions, and your attitude is not right."

The Claimant: "I am talking to you man to man, and I demand an investigation."

The Superintendent: "Now you are being sassy to me, and you are going to be put on your own time for being 'smart' and sassy to me."

The Claimant was then suspended for ten days, without pay, and the Carrier's Passenger Traffic Manager subsequently sustained the penalty.

This is the sum total of the evidence upon which the Claimant was disciplined, except that the Carrier says that the Claimant raised his voice and

spoke in an arrogant, abusive and disrespectful manner when he uttered the words accredited to him above.

There is nothing in the substance of the things said by the Claimant that can be regarded as amounting to insubordination or conduct unbecoming an employe engaged in discussing a matter of importance with his superior. Of course, the manner in which the words were spoken is not disclosed by the transcript of the proceedings but it is hardly conceivable to us that what was said could have been expressed in such an insolent tone as to justify disciplinary action. We may add that the Claimant specifically denied that he spoke intemperately.

Bearing in mind that the burden is on the Carrier to justify the imposition of the penalty, we are constrained to hold that the Claimant is entitled to have his record cleared of the charge and to be compensated for the ten days he was held out of service.

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 the disciplinary penalty inflicted by the Carrier was not justified.

AWARD

Claim (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.