Award No. 4427
Docket No. DC-4351

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 351, on the property of the Chicago and Eastern Illinois Railroad Company, for and in behalf of Mr. Clarence D. Murphy, to be reimbursed in the total amount suffered as a result of unjust and unwarranted suspension, February 17, 1947, to March 7, 1947, both dates inclusive, in violation of the current agreement and in abuse of the Carrier's discretion.

OPINION OF BOARD: On February 20, 1947, Carrier dismissed the Claimant from the service of the company for the following reasons: (1) Shortchanging passengers on Whippoorwill train December 2, 1946. (2) Endeavoring to overcharge passengers on Dixie Flagler train February 12, 1947. (3) Cursing fellow employes on Dining Cars. Claimant demanded and was given a hearing on February 27, 1949. The dismissal was sustained. Claimant asks reinstatement and compensation for time lost.

With reference to the first charge, the record shows that four young ladies occupied a table at Claimant's station in the diner on December 2, 1946. One of the young ladies gave Claimant $10.00 in payment for dinners for herself and one of the other girls. She left the car before receiving her change. The evidence is in conflict as to whether the other girl accompanied her. She returned about thirty minutes later and informed Claimant that she had not received her change. Claimant contends that he left the change on the table. Claimant also says that the young lady told him that the fault was hers. There is no evidence that Claimant kept the change or that his statement was not true that he left the change on the table. We do not think this evidence sufficient to sustain the charge made. The diner was crowded and many opportunities existed for others to have taken the change. An employe cannot be found guilty on evidence that is wholly speculative.

The second charge is based on the alleged attempt to overcharge a passenger on February 12, 1947. The passenger had ordered two breakfasts costing $2.65. The Steward quotes the patron as saying that Claimant asked him for $2.75. The patron demanded the check which was given him showing the $2.65 charge. A passenger representative overheard Claimant tell the patron "that it didn't make any difference to him what he did one way or the other." Claimant says this remark followed an objection to the size of the check and statement that he would leave no tip because of the claimed overcharge. The Carrier relies wholly upon the uncorroborated and hearsay statement attributed to this patron. The evidence is clearly insufficient to prove the charge.

The third charge is based upon the use of vile language toward another employe named Davis. Davis says Claimant called him a vile name. The Claimant denies that he did. The incident occurred out of the presence of passengers. No complaint was made by Davis who says the use of foul language among the employes was not unusual. The conduct of Davis was not that of a man who had been offended by the type of expression alleged to have been used. The evidence of Davis is not corroborated. It is one man's word against another. We are unable to say that the charge is sustained by the evidence.

Awards 2797 and 4262 are particularly applicable to this case. Disciplinary action cannot be sustained on speculative evidence. The evidence must have such weight and credibility that reasonable minds could accept it as true. The evidence in this case does not even preponderate in support of the charges made.

The Carrier concedes that dismissal from service was excessive punishment but asserts that the reinstatement of Claimant nineteen days after his dismissal in effect reduced the punishment to a point where he record sustains it. We do not think the record will support the assessment of any discipline. The Carrier was in error in assessing discipline against the Claimant.

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 dismissal of Claimant was in violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.