Award No. 4621
Docket No. DC-4581

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Request that Steward B. J. Sacre be returned to service and his discipline record cleared on account of being held out of service April 6th, 1948, to April 22nd, 1948, without an investigation under the 6-A Rules. He was notified of dismissal May 29th, 1948, and should be paid for all time lost under Rule 7-B-1 of our current agreement.

OPINION OF BOARD: This is a discipline case. The facts are in dispute. Claimant Sacre was taken out of service April 6, 1948, trial was held in April 22, 1948 and dismissal notice given on May 11, 1948. Except that in the instant case there are three separate charges of refusal to serve patrons and that food rather than beer and liquor is involved, the situation here is similar in many respects to that in Award No. 4620.

Claimant's representative argued at the trial that each of the three charges should be the subject of a separate trial. We can find nothing in the Schedule of Regulations that sustains this position.

In charge No. 1, Train No. 70, February 18, 1948, we find a single letter from one patron, president of a manufacturing company, complaining, not about service to himself, but about refusal to serve another passenger, referred to in his letter as an "elderly lady". Neither the writer of the letter or any other witness of the alleged incident appeared at the trial to give testimony. Claimant denied he refused to serve anyone. An examination of the record does not reveal evidence sufficiently conclusive to warrant concurrence in dismissal on this one of the three charges.

In charge No. 2, Train No. 70, February 22, 1948, the writer of a letter of complaint, vice-president of a nationally known advertising agency, did not appear at the trial. Two waiters, both of whom were connected with the incident, did testify at the trial. The facts are in dispute. The patron reported that after he had had his own breakfast in the dining car he asked for some breakfast for his wife in the adjoining Pullman car. He offered to carry it to her himself. He claims the steward refused. Claimant admits he told him it was against regulations to allow passengers to carry food from the diner but he denies he refused to have it sent. A waiter who overheard the conversation later sought out the patron, after talking to another waiter who ordinarily served "upstairs" or out of dining car orders, got this patron's order, got the necessary meal ticket form from Steward Sacre, and served the order. It is clear from the record that the waiter took the initiative in rendering this service. He had overheard the conversation, suggested to the steward it ought to be served "because we didn't like to have to be running in the office for everything like that and the gentleman said he had always gotten service on other railroads." (Waiter Sander's statement in trial record). There can be little doubt about the Steward's indifference to this particular patron's request for service.

Charge No. 3, Train No. 54, March 13, 1948, grows out of a report made by one of Carrier's supervisors of dining car service. Whether this was a routine check or a special one inspired by previous complaints does not appear in the record. It may well be, as was argued orally in behalf of claimant, that traveling supervisors or inspectors must complain about something to justify their usefulness. However, in this case complainant knew who the supervisor was, knew he entered the dining car before the train left Pittsburgh and remained in the car all day. He issued instructions which the steward executed. He called the steward's attention to shortcomings in the service and violation of regulations with respect to closing the car. He seated patrons himself who had been refused service by the steward. He made a detailed report. He appeared as a witness at the trial in the presence of claimant and his representatives and was cross-examined by them.

As we said at the outset this case differs little in its essentials from Award No. 4620. The steward-patron relationship is the same, the steward-carrrier relationship is the same and the same regulations govern. We have said with respect to charge No. 1 in this case that in our judgment the record as it stands in that case alone does not warrant dismissal. That there was refusal of service, failure to live completely up to the regulations in charges No. 2 and No. 3 is clear from the record. Whether this was due to indifference on the part of claimant or a determination to follow a pattern of operation of his own is not quite so clear. It matters little, however, to the patron who doesn't get service where the failure lies. The Carrier provides the facilities and the regulations; it is the business of the steward to provide service within the framework of the facilities and the regulations.

The one open question here, much as in Award No. 4620, is whether, after the Carrier has dismissed claimant for these two failures plus such other defections as the Carrier has a right to give weight to in measuring the discipline, Award 3342, this Board should overturn that decision. Dismissal is an extreme penalty. Frequently that form of discipline is an admission of weakness rather than of strength on the part of the employer; failure of its own supervisory officers either to apply or follow through on sound training programs or to build moral and esprit de corps through inspiring a deeper interest in the work involved, specifically, here, in the public relations aspects of the job. Having said that we are not persuaded that our judgment should be substituted, in this case, for that of the employer. Awards 71 and 393. If the Carrier has made a mistake it always can mitigate the action by offering reemployment.

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 with 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 evidence does not warrant our ordering reversal of Carrier's action.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1949.