

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim is filed on behalf of Robert E. Tillett, former employe of the Dining Car Department of the Baltimore and Ohio Railroad Company, for reinstatement to service with no loss of seniority or other rights and pay for all time lost as a result of Carrier's disciplinary action.

This Organization contends that the charges against Mr. Tillett were not proved and that the action resorted to by the Carrier was not based on the evidence adduced at the investigation.

OPINION OF BOARD: Claimant was a swing waiter scheduled to board train at Pittsburgh and detrain at Washington, D. C. He was charged with "Failure to carry out instructions of Steward A. C. Birk, and rendering unsatisfactory service to a dining car patron on train 8, car 1047, December 7, 1948, and previous record". Another charge was withdrawn. After hearing he was dismissed from service.

At the investigation the steward in charge of the dining car stated, in brief, that upon his return after a necessary absence from the car at Pittsburgh, a passenger seated at claimant's station asked for a check and quick service of coffee, muffins and orange juice, as he was getting off at McKeesport; that he, the steward, went in the pantry and told claimant that this man was getting off at the next stop and to take care of him; that claimant who had only two people to serve, told him to get another waiter, but upon further instruction, obeyed; that when this gentleman had finished his breakfast he asked what was wrong with his waiter, said he had been treated in a surly, indifferent manner, and left with the steward a statement written on two guest receipt stubs: on one "This is the worst service I have had in 100,000 miles of travel. Robert St. John, N.Y.C." and on the other "Room 53, 130 East 59th Street, N.Y.C., Robert St. John". The Steward further stated that Mr. St. John informed him that when he came into the dining car and saw claimant, he asked him if he could sit down; that claimant replied, "You will have to see the steward"; that Mr. St. John asked if he had to stand until the steward came back and claimant replied, "I don't know"; and that Mr. St. John made no complaint about the food.

Two other employes told that they heard the steward ask claimant to care for a passenger as quickly as possible because he was getting off at the next station and heard claimant say that he was busy and to get someone else to serve him, but there was no corroboration of the reported statement of passenger St. John.

It is urged in behalf of claimant that the evidence does not support the charge of failure to carry out the instructions of the steward, and with this we agree. Under the circumstances, claimant's reply that he was busy and

to get some other waiter, might have meant a refusal and might have meant a suggestion for faster service on the hurried passenger. That it was not a refusal or failure to carry out instructions, as charged, is evidenced by the fact that claimant did carry out the instructions without evident delay.

It is next urged that the charge of rendering unsatisfactory service to a patron is too indefinite to constitute the basis of a fair and impartial hearing. Here claimant was advised in the charge as to the date and place of the conduct complained of but no information was given him by the way of identity or description of the person served or the nature of the service deemed unsatisfactory or further to advise him of "the precise charges against him" in the words of the applicable rule. He had not been advised of the complaint at the time it was made. Better practice, at least, would require an attempted identification of the particular occasion or conduct upon which Carrier relied, where it had not previously been called to his attention.

But of more importance, here, is the fact that this charge of unsatisfactory service is supported solely by the statement of the steward as to what he was told by a passenger, entirely without corroboration except for the written notation: "This is the worst service I have had in 100,000 miles of travel". That notation makes no specific charge against the waiter, nor any charge against him at all except by implication. Passengers are often tired and petulant and temperamental, and such a vague and general statement of comparison or conclusion rather than of fact is not sufficiently definite to support the charge here investigated. Other than for that written notation we must say here as was said in Award No. 4427: "The Carrier relies wholly upon the uncorroborated and hearsay statement attributed to this patron. The evidence is clearly insufficient to prove the charge."

The record of claimant shows repeated charges of violation of rules and of insolence both to employes and patrons, and might well justify drastic discipline, but, under the rules, those charges were not then under investigation, and only where there is substantial evidence supporting a charge under investigation may the record of past complaints be invoked to justify penalty.

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

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 19th day of January, 1950.