

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 354, on the property of Missouri Pacific Railroad for and on behalf of Edward Bailey, waiter-in-charge, and Will Hinton, bus waiter, that their records be cleared of the charges placed against them respectively and that they be compensated for net wage losses suffered by them respectively because of discipline imposed in violation of Rule 17(h) of the current Agreement.

OPINION OF BOARD: The facts in this dispute are that Claimants Edward Bailey, Waiter-in-Charge, and Will Hinton, Bus Waiter, were held out of service on October 28 and 27, 1948, respectively, for alleged "improper attitude and treatment toward and accorded two passengers at breakfast on grill car 6413, train No. 117, October 23, 1948."

As a result of investigation held on November 4, 1948 both Claimants were adjudged guilty as charged. Under date of November 12, 1948 Bailey was advised he would lose his assignment on Train 124-117, would lose the time held out of service, and would return to service as an extra man until he could secure another regular assignment. He returned to service on November 24, 1948.

Under date of November 12, 1948 Hinton was advised that he was dismissed from service.

On appeal from the discipline imposed, Carrier's General Passenger Traffic Manager advised the System Chairman under date of November 29, 1948 that the restrictions placed on Bailey's employment would be removed "with the understanding he will not be paid for time lost." He also agreed to restore Hinton to service effective December 27, 1948, the equivalent of a sixty day suspension, "with the understanding he will not be paid for time lost" and that "he will not be assigned to work on the same car with Bailey."

Bailey returned to his previous assignment on Train 124-117 on December 4, 1948. Hinton returned to service on December 26, 1948.

The Organization is here on a contention that the charge against the Claimants was not proven and the action of the Carrier was in violation of Rule 17(h) of the Agreement.

The record as a whole considered, the Board is of the opinion that the return of Claimant Bailey to service on November 24, 1948, and to his former assignment on December 4, 1948, and Claimant Hinton's return to service on

December 26, 1948 is prima facie evidence of acceptance of the General Passenger Traffic Manager's decision of November 29, 1948.

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 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

That the action of the Carrier will not be interfered with.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.