

Award No. 4809

Docket No. DC-4626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

DINING CAR AND RAILROAD FOOD WORKERS UNION

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim, for and in behalf of W. H. Hatcher, that he be returned to his former position as Chef Cook with all seniority rights unimpaired and paid for wage loss, as a result of being dismissed from service without just cause.

OPINION OF BOARD: On July 24, 1948, the Claimant was the Chef on a dining car between New York and Washington. Two operatives, husband and wife, not employes of the Carrier, but representatives of a firm with which it had a contractual relationship, entered the diner and were seated. Waiter No. 2 placed a duplicator blank meal check, bearing an identification number, before the operatives and took their oral order for two hi-balls. The drinks were served and the operatives orally ordered two steak dinners. The Waiter wrote something on the check, took it away and did not return it. Later, the Waiter informed the operatives that the charge was \$9.80 which they paid.

The Chef was under specific instructions to fill no orders without receiving a copy of the guests' order check. The other copy of the order was supposed to remain on the table until the proper charge was made thereon by the Steward and the bill paid. It should then have been returned to the Steward.

At the end of the run the Steward's and Chef's copies of all meal checks handled by them are supposed to be forwarded to the Superintendent for auditing. In this instance no meal checks were received from the Chef for the day in question, and the Steward's check for the service rendered the operatives disclosed only a charge of \$1.80 for the two drinks ordered by them.

In addition to the above, only one steak dinner was served on this diner on July 24th, according to the Steward's checks; and also for the two days of the run (July 24 and 25) meat sufficient for approximately ten steaks issued to the Chef could not be accounted for by him.

The Claimant says that he mailed the copies of meal checks handled by him on July 24th and, if the failure of the Superintendent to receive them was the only evidence against the Claimant, we would not regard his guilt as sufficiently established. However, when this circumstance is considered in connection with the other proof disclosed by the record, a different conclusion is justified. Particularly significant was the inability of the Claimant to offer any explanation as to what become of ten of the steaks with which he was charged. While we express no opinion as to the culpability of the

Steward and the Waiter here involved since their cases are not before us, their conduct as disclosed by the record is a matter of importance in determining the sufficiency of the evidence to sustain the finding against the Claimant.

We cannot say that the action of the Carrier in dismissing the Claimant from service was unwarranted by the facts or that it arbitrarily exercised its discretion.

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 Employee involved in this dispute are respectively carrier and employee 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 no violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.