

Award No. 4982

Docket No. DC-4923

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Robert O. Boyd, Referee

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351**

**THE NEW YORK CENTRAL RAILROAD**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employes, Local 351, on property of the New York Central System (Lines West) that Samuel W. Falls, Waiter, be returned to service as of March 9, 1949 with seniority rights accumulated and unbroken and with compensation for net wage loss suffered as a result of unjustified and unwarranted dismissal imposed in abuse of Carrier's discretion.

**OPINION OF BOARD:** Waiter Samuel W. Falls was dismissed from service on charges that he had participated in a fight while on duty and inflicting a wound on a brakeman.

The altercation and fight is not disputed. There is a dispute as to how it started and as to who caused the injuries to the brakeman. The contention of the claimant, Waiter Falls, is that the brakeman provoked the conflict, and he denies using a knife or any instrument to inflict a wound on the brakeman. The testimony on the details of the cause and progress of the fight as given by the brakeman is in variance with the testimony of the claimant.

The evidence shows that on the morning of the altercation the brakeman entered the dining-lounge where the claimant and other members of the crew were seated at their stations. At that time the train was in the station prior to its scheduled departure and no passengers were in the car. The brakeman greeted the dining car crew in a jocular manner and directed a personal salutation to the claimant who was seated at the table nearest the lounge part of the car. His greeting was "Good morning, Sunshine" or words of like import. The brakeman testified that he thought he was addressing a waiter with whom he was acquainted and to whom he had previously jokingly addressed the appellation "Sunshine". Upon discovering his error, the brakeman, according to his testimony, started to apologize and explain his mistake. The claimant testified that he resented the remark, arose from his seat with the intention of going to the kitchen, and told the brakeman that was not his name; that the brakeman responded "Are you sure you are not a Sunshine"; and that, thereupon, the brakeman struck him. The brakeman testified that while he was apologizing to the waiter for his mistake, the claimant struck him with his fist. The claimant denies using a knife or inflicting the cuts on the brakeman. There is no evidence that they could have been received at any other occasion between the fight and when the doctor examined the brakeman some three hours later.

The claimant testified that he attempted to leave the car by going through the lounge part and that the brakeman kept after him. The brakeman testified that he retreated to the vestibule of the car and was followed by the claimant

who was attempting to push him out of the car. The testimony of the brakeman in this regard is corroborated by the testimony of the waiter-in-charge and another waiter.

It is not our function to weigh the evidence. There is evidence of record which, if believed, supports the conclusion reached by the Carrier that the claimant was guilty of participating in an altercation while on duty and inflicting a wound on a fellow employe. The record discloses that the hearing was held pursuant to proper notice and conducted in an impartial manner. Under such circumstances we are not authorized to interfere with the Carrier's conclusion that Waiter Falls was guilty of violating company rule No. 14 which prohibits fighting while on duty on company property; and we do not find that the dismissal of the claimant was an abuse of discretion by the Carrier.

**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 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

There was no violation of the current Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.