

Award No. 5667
Docket No. DC-5585

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Steward F. K. Richardson, for payment for time lost July 31, 1950 to and including August 9th, 1950, and removal of 10-days suspension placed on his service record for alleged charge of insolence to passenger, and failing to properly discharge duties as steward on Train No. 50, June 18, 1950.

OPINION OF BOARD: This is a discipline case. Claimant, a Dining Car Steward, was given a 10-day suspension on charges of insolence to a passenger and failure to discharge duties as steward properly with respect to meal service for occupants of a drawing room.

The investigation was set in motion by a lengthy letter, written a week after the event, from a disgruntled passenger who had made an unsuccessful attempt to secure two services of turkey sandwiches, ice cream and iced coffee when he wanted it for his children in a drawing room and who finally, through the assistance of the porter, wound up with some milk.

At the investigation the evidence consisted of the letter from the passenger, the steward's written comments on the letter and the passenger's written comments on the steward's comments; and the testimony of the steward, the chef, the porter and a waiter.

The Organization takes the position that Claimant was not given a fair and impartial trial. The passenger was not produced, but the Carrier had no means of enforcing his attendance and the use of the letters as evidence is a commonplace in hearings such as this (Awards 2541, 2637, 3109 and 4771). The claim is also made that the Carrier failed to produce a train conductor. However the record shows he was unavailable and the Carrier offered to adjourn and produce him but Claimant declined the offer. The claim is also made that two charges were made and that each should have been made the subject of a separate trial or hearing. Both charges arose out of the same incident or occasion and involved the same passenger; and both were included in the original notice of Claimant. Nothing in the Agreement makes any such requirement (see Award 4621). Finally the claim is made that two representatives of the Carrier at the hearing were allowed "to continuously ask the same questions in order to obfuscate" the Claimant. There were two interrogators but Claimant had the protection of a representative at the hearing; and the record does not substantiate any unfair handling.

The contention that Claimant was not given a fair and impartial hearing is not established.

Both charges are supported by competent evidence. The testimony of all of the witnesses taken together affords no adequate reason why the passenger could not have been served in the drawing room in the adjacent car before the dining car got busy.

There are, to be sure, conflicts in the record but it is not our function to resolve them; and we are unable to conclude that the Carrier acted unreasonably in sustaining the charges and imposing the 10-day suspension.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.