

Award No. 5799

Docket No. DC-5214

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, on the property of Chicago and North Western Railway Company, for and on behalf of Robert R. Locket, waiter, Edgar Gilmore, Second Cook, Hershell F. Kennedy, Third Cook and John C. Turner, Third Cook, and other employes similarly situated, that they be restored to service with their seniority accumulated and unbroken and compensated for net wage loss suffered since April 4, 1949, by each of them as a result of Carrier's disciplining said Claimants in violation of Rule 26 (a) of the existing agreement.

OPINION OF BOARD: Claimants here contend that they were improperly disciplined and request that they be returned to service with their seniority unimpaired and be paid their wage loss. Carrier contends that they voluntarily abandoned their assignments without cause and in effect resigned.

Claimants are cooks and waiters who were, at the time in question, assigned to passenger train No. 102 which was enroute from Oakland Pier to Chicago on April 4, 1949. While the train was backing from Oakland Yard into Oakland Pier, a controversy arose between the dining car steward and a waiter, one Thomas Levy. The latter was removed from the train at Oakland Pier. The claimants also left the train at this point. The question to be determined is whether claimants voluntarily abandoned the train or whether they were ordered off by representatives of the Carrier.

The dismissal of Thomas Levy from the service was sustained by this Board in Third Division Award No. 5359. The evidence taken at the investigation is voluminous. Briefly stated it is as follows: Claimants contend that after Thomas Levy was ordered off the train, that Chef F. E. Brady stated to Second Cook Randall that he thought Levy should be permitted to come into Chicago on the train. They allege that Steward Milliren overheard the statement, demanded to know what the Chef had to do with it and ordered all of the crew off the train at Oakland Pier. The Carrier contends, as shown by the testimony of its witnesses, that Chef Brady stated, "If you put him off, we all go off." Carrier's evidence shows by several witnesses that claimants walked out and refused to fill their assignment. General Inspector DelGaudio states that he pleaded with them to stay on the job and settle their difficulties after their return to Chicago but they refused to do so. While there are conflicts in the evidence, it is ample to sustain the findings of the Carrier that these claimants walked off the job just before train No. 102 was due to depart for Chicago. This conclusion is further sustained by the fact that four waiters stayed on the train and worked their assignments to Chicago. It is further sustained by the fact that claimants failed to report

for duty on assignments commencing on April 10, 20 and 30, and failed to complain to the Superintendent of the Dining Car Department of any claimed mistreatment during this period. It is not our function to weigh the evidence or to determine the credibility of the witnesses. If the evidence is sufficient to show that the finding is not arbitrary or unreasonable, this Board is not authorized to interfere with the Carrier's actions. We think the record justifies the conclusions reached by the Carrier.

Claimants in effect quit the jobs and voluntarily severed the employer-employee relationship. Having done so, they no longer had any rights under the Agreement.

Complaint is made that an investigation was not held within five days after the date it was requested. The findings as determined by the Carrier and sustained by this Board hold that no discipline was assessed. Consequently the time limits set out in Rule 26 (a) do not apply. The investigation given these claimants was for the purpose of determining if claimants voluntarily quit their jobs or whether the dining car steward ordered them from the train. The finding that they voluntarily quit eliminates the procedural question for the simple reason that after they quit, they removed themselves from the Agreement and no rights, procedural or otherwise, remained to them by virtue of the Agreement. If claimants desire to return to the service of the Carrier, they must seek it in the same manner as any other employee who has resigned and subsequently desires to return to the service of his former employer.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of May, 1952.