

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

David R. Douglass, Referee

---

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 495**

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 495, on the property of the Seaboard Air Line Railroad Company, for and on behalf of Edward Jackson, that, Edward Jackson be restored to his former assignment with seniority rights accumulated and unbroken, and that he be compensated for net wages lost.

**OPINION OF BOARD:** The record of investigation indicates to us that sufficient evidence was presented upon which the Carrier was justified in finding that the claimant had violated certain rules of the Carrier.

The claimant, a Coach Car Attendant, became involved in a heated argument with a passenger. Although the argument seems to have been started by the complaining passenger, under the rules (Page 14 of Rules governing Coach Car Attendants) it is stated that "Regardless of the provocation Car Attendants should never 'talk back' to a passenger, enter into an argument or manifest displeasure with what is said \* \* \*".

The record indicates that there was certainly sufficient provocation to cause an average human to react in a manner such as did the claimant here. However, the fact remains that the claimant was aware of the rules and familiar with them and he was bound, under the Rules, to conduct himself otherwise.

We, of this Board, are of the opinion that there is much wisdom in the old saying "Let the Punishment Fit the Crime". It has been held that it is the right of this Board to adjust and alter the severity of discipline when it appears that to do otherwise would be a sanctioning of an arbitrary, unjust assessment of punishment.

From the facts of record, we determine that the discipline has been unusually harsh, considering that the violation was not one of dishonesty nor negligence.

**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 act of the Carrier in dismissing the claimant from the service was discipline of unreasonable severity.

#### AWARD

Claim for restoration to service with seniority rights accumulated and unbroken sustained.

Claim for compensation for net wages lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 7th day of August, 1952.

#### DISSENT TO AWARD 5907, DOCKET DC-5681

For the reasons expressed in our dissent to Award 5849, Docket PC-5720, we dissent to this award.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ W. H. Castle

/s/ R. M. Butler