

Award No. 6177
Docket No. DC-5856

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351
THE NEW YORK CENTRAL RAILROAD**

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351, on the property of the New York Central System, for and on behalf of W. H. Nottage, Waiter, that he be returned to his former assignment, with all rights unimpaired, with pass privileges, progressive rates of pay, seniority or vacation rights restored and compensated for all time loss.

OPINION OF BOARD: This is a discipline case. The Claimant, W. H. Nottage, was employed by the Carrier as a waiter. On November 7, 1949, the Carrier notified this Claimant to report to Room 1229, La Salle Street Station, Chicago, Illinois, at 12:30 P. M., Friday, November 18, 1949, for a hearing with respect to the following charges:

"1—Accepting verbal order for certain breakfast items from guest in Room F, Car 192, Train 19, October 14th, 1949; this in violation of Rule 41.

"2—Serving certain breakfast items on verbal order in Room F, Car 192, Train 19, October 14th, 1949; this in violation of Rule 41.

"3—Failing to remit to Company revenue collected for certain breakfast items served in Room F, Car 192, Train 19, October 14th, 1949.

"4—Making false entry on check B 57-66-96 to indicate that room service charge was not applicable and had not been made, Train 19, October 14th, 1949.

"5—Failing to remit to Company room service charge collected from guest in Room F, Car 192, Train 19, October 14th, 1949."

This notice was given under Rule 6 of the effective Agreement. After the hearing, the Claimant was notified on November 22, 1949, that, after a careful consideration of the evidence, he was found guilty of Charges 1, 2, and 3, and was dismissed from Carrier's service, effective as of November 22, 1949.

The defense in this case places a great responsibility on the steward for not having the Claimant confront the passenger concerning the written statement placed on the back of Check No. B57-66-96, and because the steward did not make the investigation himself but had the conductor do it for him. The steward explained at the hearing that he asked the conductor to make the investigation "As I was busy at the time, and the Pullman conductor

was coming through the car at the time. I asked him if he would interview the passengers in Car 192, Bedroom F, and see what they were actually served." The steward knew from a request of the porter in Car 192 the night before that two passengers occupied Bedroom F. When he examined the breakfast check, the check called for only one breakfast, and he then made an investigation. Not having the waiter confront the passengers is not fully explained, except that time would not allow such a discussion. The waiter could have obtained a statement from passenger Allen since the Carrier was willing, after the close of the testimony, to continue the hearing for the purpose of obtaining a statement from the Pullman porter. If the Carrier were willing to do this, it would have granted a request for an adjournment to secure the statement from Allen.

The Claimant admits that he wrote the breakfast order for the food served in Bedroom F, Car 192, which is a violation of Rule 41, and that he served the breakfast order given verbally, which is a violation of Rule 41. The reason for so doing the Claimant stated, was that he was informed by one of the guests that he was sick, and the guest asked him to write the breakfast order. The Claimant testified that, in taking upstairs orders, a lot of people tell the waiters to write the orders. No testimony was offered by the claimant to show that this was the accepted practice in taking room service orders. However, the Pullman conductor was present at the hearing and stated that the passenger wrote on the reverse side of the check what was served to the two passengers for breakfast, what was paid (\$3.50 or \$3.60 plus a tip of \$1.00 from a \$10.00 bill); that the passenger seemed to be in a good condition, and signed his name and address to the statement. This testimony was not shaken on cross examination.

Furthermore, the passenger verified the statement given on October 14, 1949, by a statement given on November 3, 1949, which shows that an amount different from the amount of \$1.20 shown on the sheets was given to the Claimant.

From a careful reading of the transcript of the testimony taken at the hearing and the arguments of the parties, this Board finds that the charges have been substantiated. The claim will be denied.

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 disciplinary action was warranted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.