

Award No. 6540
Docket No. DC-6697

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION.

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Request of Dining Car Steward Isaac Johnson, Northern District, for the removal of discipline (60 demerits) assessed his personal record, October 14, 1949, and claim for compensation as provided in Rule 20, Section (g), Dining Car Stewards' Agreement.

OPINION OF BOARD: Claimant was notified under date of October 7, 1949, to attend formal investigation on October 11 on the following charge:

"* * * your alleged discourteous treatment of and annoyance to passengers while on duty as Steward in charge of Dining Car 10255 operating in coffee shop service Train No. 52 October 6, 1949, in connection with which occurrence you are hereby charged with responsibility which may involve violation of that part of the following General Rules and Regulations, effective October 1, 1948:

"Rule K. 'To avoid annoyance to the public, employes and others authorized to transact business at stations, and on or about trains, must be courteous, orderly and quiet.'

"Rule 801. 'Indifference in performance of duties will not be condoned * * *,'

"Rule 802. 'Civil, gentlemanly deportment is required of all employes in their dealings with patrons, the public, their subordinates, and each other * * *,'"

Claimant complains that—

1. Denial of his request for a two-day postponement of the hearing was arbitrary.
2. Charge was not specific as required by the rule.
3. His appeal was heard and denied by the same official as presided over the investigation.
4. The evidence adduced at the investigation did not support the alleged charge.

No good purpose would be served by reviewing this entire matter to prove that all of these contentions are good because if any one of them is good the claim will have to be sustained.

This disciplinary action was taken against claimant because of alleged discourtesy to two patrons in the dining car on October 6, 1949.

From a reading of this record we cannot determine whether the Carrier is relying on the alleged discourtesy that took place at lunch time or the one that was supposed to have taken place at dinner toward the same patrons. If it is relying on what took place at the lunch hour, the evidence does not sustain the alleged discourtesy, and if it was the one at the dinner hour, one of the Carrier's witnesses was as much at fault as the claimant. Carrier must have been aware of this dilemma or else it would not have attempted this double-barreled charge at the hearing. Even assuming that discourtesy was proven on both occasions, that does not avoid the vagueness of the charge.

That the discipline in this case was improperly handled is brought out in the reported testimony. Carrier's Superintendent Mitchell asked Train Passenger Agent C. W. Stoley the question: "Don't you realize, as a matter of taking care of the complaint properly, and in justice to the Steward involved, that you should have handled it with him?" Answer: "Yes sir, I do now."

So it appears that the claimant was the victim of a mistake of the man, upon whose testimony the Carrier heavily relies. Under the circumstances Carrier should never have permitted these charges to be filed.

The record shows that the claimant had been with the Carrier for 25 years and this was his first investigation, and further that the 60 demerits assessed against his record have since been removed by satisfactory service and conduct but even so, he is entitled to have his record cleared from the original assessment of the demerits and for compensation as claimed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 Carrier violated its Agreement, and the claim should be sustained.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.