

Award No. 6598

Docket No. DC-6444

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

LeRoy A. Rader, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES LOCAL 495**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 495, for and on behalf of Harry W. Rogers, that he be returned to his former assignment, with seniority rights unimpaired, compensated for time loss and all penalties imposed be stricken from his record.

**OPINION OF BOARD:** There is direct conflict in the evidence taken at the hearing in which Claimant received a suspension, however, there is supporting evidence corroborating Stewart Weidner in the charge of sufficient strength to permit a finding such as was made by the official in charge of the hearing.

Many awards are cited on behalf of both parties in support of their respective positions. However, in the absence of a showing made that Carrier acted in an arbitrary or capricious manner in the action taken it is well established that the Division should not substitute its judgment for that of Carrier. During the hearing the officer in charge of the same had the opportunity to see and hear the witnesses give their testimony and therefore was in a better position to determine the facts as shown by the evidence than can be attained by this Division of the Board by a reading of the evidence given at the hearing. Under the record here presented we see no reason to substitute our judgment for that of Carrier. For a good statement of the principle involved in discipline cases see Award 6360.

**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 claim is denied in accordance with Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1954.