

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 351 on the property of the Erie Railroad Company for and on behalf of Newland McDuffie, that he be compensated for all time loss and that he be restored to his former position with seniority and vacation rights restored; as a consequence of a suspension from his employment by the carrier from April 14, 1953 to April 18, 1953.

OPINION OF BOARD: This is a discipline case arising on a report of the Waiter-in-Charge against Claimant on the allegation of misconduct growing out of an incident occurring on April 11, 1953 while both were on duty. Claimant, a Chef-Cook, was given a hearing which resulted in his being disciplined to the extent of a five day suspension.

It is contended by the Organization that the charge has been changed and twisted since originally filed, showing that Carrier was desperately seeking some grounds on which an insubordination charge could be based, citing among other things the dropping of an allegation charging intoxication. Also, contending that it is significant that if Claimant was to receive a fair hearing Waiter McIver should have been called as a witness as both sides apparently agree that he was in a position to know and testify as to the truth of the conflicting evidence presented at the hearing. Employees had requested that McIver be present at the hearing and that Petitioners are not in a position to force another employee to appear as a witness. That Carrier assumed Claimant was guilty and sought to make him prove his innocence, which is contrary to the intent of investigation rule.

Respondent Carrier takes the position that Claimant was given a fair and impartial hearing and cites Rule 8 of the current Agreement in answer to the allegation of Petitioner on the calling of witnesses. Rule 8, entitled "Grievances and Discipline", provides in part—

"Such employes may have representatives and witnesses of their own choice (except discharged employes) present. * * *"

Apparently there was a disturbance of some sort on the date in question, on the diner. The Waiter-in-Charge has charge of the car. If there was a need on the part of the Chef-Cook, Claimant herein, to register complaint as to the instructions given him by the Waiter-in-Charge he has a remedy under

the Agreement and could report the matter to proper supervisory authority on a higher level. This could have been done by him but apparently he did not choose to follow such a remedy and caused a scene on the car. He now complains that Waiter McIver should have been called as a witness and that he requested Carrier to have McIver present. We do not deem it to be a fact in interpreting Rule 8 and that part of the same set out above, that it is incumbent on Carrier to summon witnesses on request of the Organization. To so consider the rule would be to place a burden on Carrier not imposed by the rule, and would be reading something into the rule that is not there.

In view of the mild nature of the disciplinary action taken we do not feel that on this record we should substitute our judgment for that taken as the result of the hearing. This, with the proviso, that this finding will have no effect on Claimant's seniority status and vacation rights. This last finding in view of the record on this hearing in which some extenuating circumstances must have existed, as alleged by Petitioner, in view of the light discipline measure assessed against Claimant.

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 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 29th day of March, 1955.