

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, Local 495

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 495 on the property of the Atlantic Coast Line Railroad for and on behalf of C. Daily, bartender; that he be restored to service with his seniority rights unimpaired and that he be paid for all time lost since the first entry of discipline in this cause; that all rights he was entitled to be restored to him without question.

OPINION OF BOARD: This is a discipline matter. The Claimant was employed as a Lounge Car Attendant and Bartender on a Train operating between Miami, Florida, and New York City. On the date in question, that is, March 12, 1953 Respondent charges that Claimant was guilty of insubordination and failure to carry out instructions. Pursuant to a Notice duly issued, hearing was held and Claimant was notified that he had been found guilty and stood dismissed from service.

Reinstatement to service with all rights unimpaired and reimbursement for all wage loss is sought.

There is no conflict as to pertinent circumstances and conditions that existed just prior to the time that Claimant was allegedly discourteous to the Trainmaster, at the same time failing to follow instructions given him to instruct passengers who were playing cards to put their money away.

Awards of this Board in the main are uniform in holding that disciplinary action by a Carrier will not be disturbed if, substantial evidence that substantiates the charge is presented, save and except when the penalty imposed is excessive and unreasonable, when considered in light of the nature of the violation and the circumstances surrounding same.

On the basis of the transcript of the hearing, we conclude that the Claimant received a fair hearing and in the final analysis was guilty of failing to follow instructions given him. For this failure some degree of discipline was proper, however, we are of the opinion that there are extenuating and mitigating facts and circumstances of record here that justify, even in the face of a prior 15 day suspension previously imposed, a finding that the extreme penalty of discharge was unwarranted, and in the premises excessive and unreasonable.

We cannot conclude that the record indicates any extreme discourtesy toward Mr. King after he (the Claimant) was aware of who was addressing

him. In the absence of an identification by the Trainmaster we think that Claimant was justified in inquiring of him (King) as to who he was and what he wanted. Claimant here has some 23 years of service, of which approximately 13 years is unbroken and apparently without blemish except for the instance above noted. We are of the opinion, and so find and hold that the Claimant should be restored to service with seniority and other rights unimpaired but without pay for time lost, and/or reimbursement, credit or allowance for vacations or other monetary advantages which might otherwise accrue to the Claimant under the effective Agreement during the period he was out of service.

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 Claimant should be reinstated with seniority unimpaired but that this claim should be in all other respects denied.

AWARD

Claim sustained in accordance with opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.