

Award No. 8048

Docket No. DC-7397

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty—Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 495

SEABOARD AIR LINES RAILROAD COMPANY

STATEMENT OF CLAIM: For and on behalf of R. W. Johnson, Chair Car Attendant, that he be restored to his position, vacation rights unimpaired and that he be compensated for all time lost as a consequence of an incident which occurred or alleged to have occurred on March 13, 1954 whereby Mr. Johnson was suspended for 90 days and that he be paid for all time lost as a result of the discipline imposed.

OPINION OF BOARD: The case involves the propriety of a 90-day suspension imposed upon Chair Car Attendant, R. W. Johnson, arising out of an incident which occurred March 13, 1954, while he was on duty. It involves a number of highly disputed facts which must be resolved before the Board can determine whether the discipline was proper.

The Employees' submission makes no reference to any contract provisions or violation but the complainant undoubtedly is taking the position that the discipline of a 90-day suspension from service was too severe under the circumstances, and that under the provisions of Rule IV he is entitled to complete restoration.

We have before us a transcript of the hearing conducted at Tampa, Florida, March 23, 1954. At that hearing R. W. Johnson, Chair Car Attendant, was charged with eight acts of misconduct while on duty March 13, 1954. Some of the charges overlap.

We will pass upon each charge as set forth in the record:

Charge No. 1—Reporting for duty 19 minutes late. True. Johnson came to work on time but then went to eat and arrived on duty late, after passengers were ready to board his car.

Charge No. 2—Endeavoring to forestall or estop flagman from performing his normal duty. Untrue. A smart-aleck statement by Johnson to Glover, the flagman, to the effect that if the Flagman insisted on running his (Johnson's) business Johnson would go back and do the Flagman's job, cannot be construed into an attempt "to forestall or estop the flagman from performing his normal duties."

Charge No. 3—Being on duty in an abnormal condition. Untrue. It is true that Johnson became angry and excited while on duty but this hardly substantiates the charge as stated.

Charge No. 4—Initiating an argument and threatening bodily harm to flagman. It is true that the responsibility for initiating the argument rests primarily with Johnson. Johnson took offense to and became angry because of a curt instruction given him by Flagman, Glover, to get the visitors off the train. (p. 53.) There was no argument until Johnson in effect told the flagman to mind his own business. Then one word lead to another, both participants unnecessarily extending the quarrel.

Charge No. 5—Boisterous and indecent conduct while on duty and about passengers. True, insofar as his conduct was boisterous. Whether any passengers heard him is neither proved nor disproved.

Charge No. 6—Refusing to perform duties in normal manner as directed by conductor. Not proved or disproved.

Charge No. 7—Insubordination to the conductor. Not proved or disproved.

Charge No. 8—Failure to report to superintendent's office in Tampa as per conductor's instructions. This charge is true to the extent that Johnson did fail to report to the superintendent as instructed, but there are mitigating circumstances. Johnson was put off the train at Tampa, Florida, on Saturday night, without money with which to obtain a room. The superintendent was not expected until Sunday or later. After conferring with a Brotherhood representative and receiving transportation from the railroad he went home to Washington later that night and did not wait for the superintendent.

We now have the question of whether the penalty imposed on Johnson should be sustained, modified or reversed. In view of the fact that we find Johnson guilty of some rather serious misconduct and that the penalty was a 90-day suspension we will **not** substitute our judgment for that of management by modifying the number of days of suspension and differing merely on degree. We hold that the discipline was within reason. We hold further that the hearing conducted in Tampa, Florida, March 23, 1954, by J. E. Crosby, Assistant Superintendent, was fairly conducted.

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 claim should be denied.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 2nd day of August, 1957.