

**Award No. 8122**

**Docket No. DC-8649**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Norris G. Bakke, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351**

**MONON RAILROAD**

**STATEMENT OF CLAIM:** Claim by Joint Council Dining Car Employees, Local 351, on the property of Chicago, Indianapolis and Louisville Railway Company for and on behalf of E. C. Aaron, Waiter-Grill Car Attendant, that he be restored to service with seniority and all other rights unimpaired and compensated for net wage loss since May 23, 1955 having been dismissed from service by Carrier in violation of current agreement.

**OPINION OF BOARD:** This is a discipline case. The charge against claimant was "For using vile, obscene and abusive language to Coach Cleaner Mary Kimberling while on duty and on company property at Belt Junction Yards, and for having unauthorized parties in Monon Railway passenger equipment on April 21, 1955."

Following a notice of dismissal which was sent to claimant on May 19, a hearing was had on the charge before D. H. Dietrich, Carrier's Assistant Superintendent of Dining Car Service, who found claimant guilty as charged and on June 7, 1955, claimant was advised that the notice of dismissal was to stand.

We are asked to review the matter and to set aside the order of dismissal principally on the ground that the charges were not proved. We have carefully studied this record and while we are not satisfied that the charge of "having unauthorized parties (which we assume to mean persons) in Monon Railway equipment" was proven, we are satisfied that the charge of using vile and obscene language was proven as charged.

In considering the imposition of dismissal following conviction we have a right to take claimant's service record into consideration and doing so we conclude that his dismissal was justified.

We are not impressed with the Joint Council's claim that claimant did not have a fair trial because the same person acted as prosecutor, judge and jury, because his counsel said "I must admit that the investigation has been fair and impartial," and the sufficiency of the evidence was passed upon by a reviewing board. Awards 5026 and 5701.

**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 Employe involved in this dispute are respectively Carrier and Employe 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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.