

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Employees Union, Local 351 on the property of the Chicago & Eastern Illinois Railroad Company for and on behalf of C. D. Murphy, that claimant to be returned to former position held and paid for all time loss, with seniority and vacation rights unimpaired account Carrier having dismissed from its service effective April 8, 1957 in violation of effective agreement.

OPINION OF BOARD: Claimant C. D. Murphy, on March 15, 1957 was a dining car employe on train No. 12 Northbound from Jacksonville, Fla., to the Dearborn Station, Chicago. At Englewood Station in Chicago, prior to arrival at Dearborn Station, Claimant Murphy, along with several other dining car employes, detrained with the intention of going home. Company officials apprehended the detraining employes, some of whom fled, some returned to the train, and Claimant Murphy, after a scuffle with C. E. Ruch, Captain of Police, was apprehended. There is a substantial discrepancy in the details as to Claimant Murphy's apprehension. This is not unusual.

Murphy claims he was ill and was therefore leaving the train early. Permission to so leave was not obtained. He had in his hands his kit bag and a mesh bag of oranges given to him in Florida. When he had put his kit bag in his car (the car was waiting with his wife in it) and while he was getting in the car himself, Mr. Ruch grabbed for the bag of oranges, and started to scuffle with him. At the same time Mr. Ruch told him to bring his kit bag and case with him, and when he turned to do so, Mr. Ruch hit him over the head. The only reason he scuffled with Mr. Ruch was because he saw his gun, didn't know who or what he was, but was afraid he would use the gun. Murphy failed to explain the coincidence that his wife had his car at the Englewood station.

Mr. Ruch's story, substantially different, is as follows: That he and Mr. Henry first met two waiters (one of whom was Murphy) halfway down the stairs at Englewood station; Murphy was carrying a kit bag, and a mesh sack of oranges; that they identified themselves as Railroad Agents and ordered the waiters to return to the station; that thereupon Murphy struck him with his kit bag, ran down the steps to his waiting car, into which he threw the kit bag and ordered his wife to "Take the bag and dump the stuff." Murphy's wife drove away. In the meantime, a struggle ensued, and after subduing Murphy with a flashlight he placed him under arrest, and returned him to the station.

Subsequently after hearing Murphy was dismissed. Appeal is made that:

1. The Claimant was not given a fair and impartial investigation.
2. Discrimination in that other detaining employees were not discharged, but given thirty day suspensions.
3. The hearing officer did not render the opinion but that instead it was rendered by M. M. Becker, the officer placing the charges, who had predetermined Murphy's guilt, prior to the hearing.

The evidence and transcript simply does not sustain the Claimant's position or appeal to this Board. The hearing officer who observed the Claimant and other witnesses at the time of hearing had ample opportunity to judge the credibility of their testimony. Even on review the claim of illness coupled with the lack of permission and the presence of his wife and car at the Englewood station casts conclusive doubt on the testimony. The additional testimony of the police officers while conclusive in itself, is hardly necessary.

The claim of discrimination is appealing but not sustained. Murphy was dismissed, the others merely suspended. The trial transcripts of the others are not submitted, but this transcript indicates that Murphy testified falsely, and engaged in a scuffle when apprehended, while nothing is shown of similar nature, in regard to the others. The difference is sufficient to warrant the different punishments.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1958.