

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 385

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 385, on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for and on behalf of W. L. Fitzgerald, waiter; Henry L. Simmons, tap car waiter; L. E. Fulbright, waiter; David J. Smith, buffet attendant; M. E. Powell, buffet attendant; H. B. Clark, waiter; Charles Fleming, waiter; that heretofore the Carrier caused an entry of facts to be entered on the historical record of each of the claimants; that said entry be removed from the historical records of each of the claimants and that their records be put in the same condition they were before the entry was made.

OPINION OF BOARD: This matter concerns the request of seven claimants that the Carrier's entry of facts on their historical records be removed.

The Organization takes the position that the investigations of the claimants were not conducted in a fair and impartial manner in that the evidence presented against the claimants was in the form of statements of, and by, operators who did not appear at the hearing. The Organization contends that the claimants should have been permitted to confront and cross-examine their accusers and that by failing to make such witnesses personally available, the Carrier denied the claimants their rights under the investigative rule of the effective agreement.

Rule 8 of the effective agreement does not contain any prohibition against the use of written statements nor does it state that a witness who submits a statement must be present for cross examination by the second employe.

There was no departure by the Carrier from the procedure requirements in connection with the conduct of the investigation of these seven claimants. The use of investigators by the Carrier is necessary. Claimant Fulbright was confronted by the testimony of Inspector Duame, who testified personally at his investigation.

From a reading of the records of the Investigations of these claimants, we conclude that there exists substantial evidence that justifies the action of the Carrier.

Due to this denial award the procedural question raised by the Carrier as to whether or not the Organization has complied with Circular No. 1 of the National Railroad Adjustment Board will not be gone into.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 7th day of November, 1960.

COMMENT OF LABOR MEMBER IN CONNECTION WITH AWARD 9624; DOCKET DC-7515

In the final paragraph of the Opinion of Board the majority, consisting of the Referee and the Carrier Members, indicate that Carrier raised some question as to whether the Organization complied with the Board's Circular No. 1. The implication is in error because neither this nor any other procedural question was raised by Carrier. The matter as before the referee was injected by the Carrier Members. The majority was aware of this before Award 9624 was adopted but refused to correct the discrepancy.

/s/ G. Orndorff

Labor Member