Award No. 9864
Docket No. DC-11905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 848

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 848 on the property of the Chicago, Burlington & Quincy Railroad Company, for and on behalf of T. J. Avery, Waiter, that he be restored to service and compensated for net wage loss since July 7, 1959, with seniority and vacation rights unimpaired account of Carrier dismissing claimant from service in violation of the existing agreement.

OPINION OF BOARD: Ths dispute stems from the termination of Claimant's employment on July 7, 1959, when he was notified by a letter from Mr. Mott, Carrier's Supervisor of Car Personnel, that he was "being closed out of service permanently effective this date". The letter also stated that Claimant, an extra waiter in the Dining Car Department, had refused to accept an assignment beginning July 4, 1959, at 10:50 A. M. without giving a "legitimate reason" and had voluntarily severed his employment relationship with the Carrier.

It appears that Claimant had returned to Chicago from his last assignment on July 2, 1959, at 10:30 P. M. and been notified twelve hours later, at 10:30 A. M. on July 3 to report to the aforementioned July 4 assignment. This he refused to do, although, according to the testimony of Mr. Mott, he had been advised that failure to report would be considered the equivalent of resignation.

Claimant's request for an investigation pursuant to Rule 26 of Petitioner's Agreement with the Carrier was initially rejected by the latter, but the matter was appealed to higher managerial levels and an investigation finally held on December 16, 1959, about five months subsequent to the original request.

In Petitioner's view, Carrier's refusal and failure to hold an investigation in the first instance constitutes a violation of the Agreement that the investigation of December 16, 1959 did not remedy. Assuming for purposes of this discussion, the validity of Petitioner's assertion that Claimant was

entitled to an investigation, it is the opinion of this Board that he did receive an investigation that adequately cured the failure to hold one at an earlier date. Neither Rule 26 nor any other provision of the Agreement provides any time limit for the holding of investigations and the lapse of time found here, though substantial, does not seem unreasonable in view of the existing circumstances (cf. 1st Division Award 17911). Contrary to Petitioner's contention, the record is clear that the issues were not unduly restricted. The investigation appears to have been fairly conducted in accordance with the terms of the Agreement and no persuasive evidence has been submitted to the contrary. Claimant was afforded full opportunity to be represented, to present his case in all particulars and to examine and cross-examine witnesses.

As to the merits of the dispute, there is ample credible evidence supporting Carrier's findings that although he had not signed the extra register Claimant was next in line for the July 4 assignment in question, that he refused to give him reasons. While Claimant stated that he was not afforded he had the opportunity to do so. Mr. Mott testified that Claimant definitely refused to give him reasons. While Claimant stated that he was not afforded the chance to explain his refusal to the Carrier, there is no showing that he even attempted to do so although he had all day July 3rd after 10:30 A. M. and up to 10:50 A. M., July 4th to make the effort and as a matter of fact did reach a clerk and Mr. Mott by telephone on July 4 at 9:00 A. M. Based on any interpretation of the facts, it was not unreasonable to ask of Claimant that he affirmatively request relief and submit his reasons in support of that request. Under these circumstances, we find no valid alternative to the conclusion that Claimant's refusal to accept the July 4th assignment constitutes insubordination. In this connection, see Awards 9511, 8712 and 4591.

In the light of the foregoing, we are not disposed to disturb Carrier's findings or to hold that it exceeded the considerable latitude it possesses to assess discipline. See Awards 9637, 9045 and 8683.

The claim will accordingly be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1961.