Award No. 9941
Docket No. DC-11889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Steward Henry A. Dyer for reinstatement to service with seniority rights unimpaired and for compensation for all monetary loss sustained from October 21, 1958, date he was dismissed from service as the result of an investigation held on October 10, 1958, on basis that discipline applied was (a) in violation of the agreement (b) on charges unproved (c) unreasonable, unjust and arbitrary.

OPINION OF BOARD: Claimant, a Dining Car Steward, was dismissed on October 21, 1958, after an investigation had been held on charges that he had refused to serve breakfast to passengers on August 31, 1958, September 12, 1958 and September 17, 1958, and had served breakfast to a Conductor on September 12, 1958 "without issuing a meal check and failing to make a remittance therefor." The claim now before us does not differ in substance from that originally submitted to the Carrier or processed on the property, and we find no merit in Carrier's contention to the contrary.

While the charges were served upon Claimant prior to the investigation, Petitioner maintains that two of them — those relating to refusals to serve customers on August 31 and September 17 — should be eliminated from any consideration since the Carrier neither notified Claimant of those charges nor held a hearing thereon within ten days of the occurrence of these incidents. In support of this contention, it cites Article 6, Section 2(a) of the applicable Agreement which prescribes that "* * * Prior to the hearing, he will be advised in writing of the precise charges against him and the hearing will be held within ten days, if practicable, after the incident occurs necessitating the hearing * * *." It is manifest that the ten day period is not absolute but applies only "if practicable". Nevertheless, the time for holding such hearings is under the Carrier's control and if the provision is to have any meaning at all, it would require that in those instances where it is not practicable to observe the ten day limit, Carrier must explain the circumstances supporting that conclusion. See First Division Awards 7064, 16299, 16659. There is no question but that Carrier failed to comply with these minimum requirements of Article 6, Section 2(a) insofar as the August 31 incident is concerned and it will therefore he excluded from our consideration of the charges.

The September 17 incident is not in the same category for no time limit objection was made at the hearing with respect to it. Moreover, if the hearing had been held on September 23, 1958, as originally scheduled, this incident could have been heard well within the ten-day limit. The hearing date was postponed at Petitioner's request to accommodate Claimant's representative and it would be neither fair nor proper to penalize Carrier under those circumstances.

There is substantial competent, though controverted, evidence, supporting Carrier's findings regarding the three September 12 and 17 incidents and in accordance with a long line of prior awards (9046, 9322 and many others) we will not disturb them. We do not subscribe to Petitioner's contention that Claimant may escape disciplinary action when one of four charges is eliminated, particularly where as here critical customer relations were so directly and materially involved. While we appreciate that dining car operations are not uncomplex and require a reasonable time for preparations between meals, it must be obvious that the steward is in a strategic position to promote or impair customer relations and may properly be held to a high level of conduct in that regard.

We accordingly are reluctant to take any action that would modify the discipline meted out by Carrier. Neither the elimination of one of the four charges nor the fact the General Superintendent preferred the charges and also conducted the hearing is sufficient, standing alone, to persuade us that some lesser discipline would be appropriate (See awards 8179, 5026, 4840). However, when both are considered together and in the light of the General Superintendent's opening remarks at the hearing detailing "refusal to serve" incidents that antedated, and are not part of, the charges that provided the announced basis for the hearing, some doubt is created as to the fairness of the proceeding in general and as to whether those earlier incidents were considered in determining guilt as distinguished from punishment. In this Referee's opinion, these doubts are neither unreasonable nor insubstantial and require us to review such extreme discipline as dismissal. In view of those factors, we will direct Claimant's immediate reinstatement but without compensation from October 21, 1958 to the date of reinstatement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claimant reinstated with seniority rights unimpaired but without compensation from date of dismissal to date of reinstatement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1961.