Award No. 10226

Docket No. DC-9921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Employes Union, Local 351 on the property of the Erie Railroad Company for and on behalf of Newland McDuffie that he be reinstated as chef cook with all rights unimpaired and compensated for net wage loss incurred since July 31, 1954 account Carrier's disqualification of claimant as chef cook effective said date, said disqualification being in violation of effective agreement.

OPINION OF BOARD: This is a discipline case. After investigation, claimant was disqualified as a chef-cook and demoted to the rank of second cook.

Organization contends that the Carrier abused its discretion in assessing a much more severe penalty against the claimant than the facts of the investigation warranted. Organization further contends that the first paragraph of Rule 8(b) of the Agreement provides for only three methods of discipline. Disqualifying or depriving an employe of his seniority in one class, and demotion, as a disciplinary measure, is not provided by the Rule. We are asked to decline the Carrier the latitude it seeks in disciplining employes and to refuse it relief from its contractual limitations. In brief, we are asked to construe what the organization contends is the clear and unambiguous language of Rule 8(b).

We must first examine the facts of the case as they apply to the procedural requirements of the third paragraph of Rule 8(b) of the Agreement. Carrier in its original submission and subsequent arguments has raised this defense. The third paragraph of that rule reads:

> "The right of appeal through the regular channels to the Chief Operating Officer designated is conceded. However, appeals from decisions rendered must be made within thirty days. All decisions concerning grievances progressed in the regular manner will be made in writing if requested."

We agree with the organization that the time limitation applies only to appeals handled on the property. Award 10087. It is to the procedure on the property to which we now turn.

There is some question raised in the record as to the nature of the first appeal on the property which was by letter dated August 5, 1954. That letter clearly states that the General Chairman asked for a reversal of the disqualification of claimant on the basis that it was arbitrary. The Carrier in its letter of September 24, 1954 in referring to the August letter and a discussion with the General Chairman the day previous (September 23, 1954) stated that the request of leniency had been raised at the conference and this would be given further consideration.

A thorough examination of the record from a procedural standpoint compels us to hold that the claim on the property was not changed and it was properly progressed on the property. The Chief Operating Officer denied the claim on May 25, 1956, not October 12, 1954 as claimed by the carrier. The original submission to this Board which followed on August 20, 1957 was not barred by laches, as claimed by the Carrier.

Did the Carrier abuse its discretion in affixing the discipline on claimant? We cannot subscribe to employe's contention that the first paragraph of Rule 8(b) which states:

> "Employes . . . shall not be disciplined by record, suspended (except pending investigation) or dismissed without proper investigation,"

prohibits an employer after proper investigation from exercising some latitude in imposing on an employe a lesser penalty than the severe penalty of dismissal.

The purpose of the first paragraph of Rule 8(b) is to assure a proper and timely investigation before discipline is imposed. It is not a limitation on the scope of the discipline which may range from record to suspension to dismissal. The power of dismissal includes the power of disqualification of a chef-cook and a demotion to second cook as was done in the instant case. We do not find the discipline excessive.

The carrier did not act arbitrarily, without just cause, or in bad faith. There was substantial evidence to support the charge. We have been given no reason based on the facts of the case or on claimant's past record to interfere with the action of the Carrier.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1961.