

**Award No. 10308**

**Docket No. DC-12337**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Richard F. Mitchell, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES UNION, LOCAL 351**

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 351 on the property of the Chicago & Northwestern Railroad Company, for and on behalf of Wash M. Perry, that he be restored to service with seniority and vacation rights unimpaired, and compensated for net wage loss since May 6, 1960, account of Carrier dismissing claimant from service on that date in abuse of its discretion and in violation of the existing agreement.

**OPINION OF BOARD:** Wash M. Perry was dismissed from Carrier service on May 6, 1960, as a result of an investigation held on May 3, 1960.

It is admitted in the record by the Claimant that he was called on the morning of March 23, 1960 for chef assignment on Train 401-400, Car 6959 with reporting time of 9:30 A.M. on March 24, 1960 that he accepted the assignment but failed to report therefor. His excuse for not reporting was that he overslept.

Rule 8 of the Rules and Instructions for Dining Car Employees, reads:

"Employees must report at the designated time and place for their assignments and all assignments must be fully completed, they must devote themselves exclusively to the company's service, attend to their duties during the prescribed hours, obey instructions from the proper authority, they must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

As a result of the investigation Claimant was dismissed from Carrier Service, per Discipline Notes May 6, 1960.

Employees contend that it is impossible to determine whether Carrier dismissed him solely for failing to appear to cover his assignment on March 24, 1960, or because he had a part time job. There is no question but what Claimant was dismissed because he violated Rule 8 quoted above—See Awards 6277-8502 and Award 5189.

Employees claim that to impose upon Claimant for the violation charged, the most severe penalty within its power, would constitute a flagrant abuse of

its discretion. While Claimant's guilt of the offense in this one specific instance might not be considered to be sufficient to warrant the penalty of dismissal, his guilt of the offense considered in the light of his previous poor record justified the dismissal penalty.

In Award 7018—this Division without a Referee said: We quote.

"\* \* \* However, the record shows that the Carrier apparently assessed the extreme penalty because of this employe's record of unsatisfactory service; therefore the Board is not disposed to disturb Carrier's action."

In Award 9513:

"\* \* \* Claimant's past record reflects numerous other rules infractions. In view of Claimant's poor past record, it cannot be said that the Carrier was unreasonable or too severe in discharging him for the offense of April 20, 1959."

The record shows that Claimant was discharged after an investigation in March 1959, because of his unavailability for extra service in January and February 1959.

The Carrier considering Claimant's past record was justified in dismissing Claimant.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 26th day of January 1962.