Award No. 10716
Docket No. DC-10054

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ben Harwood, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union Local 370 on the property of the Delaware, Lackawanna and Western Railroad Company for and on behalf of Oliver Mitchell, Waiter, that he be compensated for net wage loss suffered account suspension from service May 12, 1957 to and including June 10, 1957, said suspension being in violation of effective agreement.

OPINION OF BOARD: Before departure of Carrier's Train No. 5 on Sunday, May 12, 1957, the Claimant, Oliver Mitchell, a waiter, was removed therefrom by the Superintendent of the Dining Car Department, Mr. R. H. Lloyd, who considered Mitchell unfit to perform his duties because "he had a strong odor of alcohol on his breath, was incoherent, weaved in his walk and his eyes were glassy."

Under date of May 15, 1957, the following letter was sent to Mr. Mitchell:

> "You are suspended from service pending an investigation that will be held in this office, 721 Jersey Avenue, Jersey City 2, New Jersey at 10:00 A.M. Wednesday, May 22, 1957. Charges preferred by Mr. R. H. Lloyd, Superintendent Dining Car Department who states it was necessary to remove you from D. L. & W. train No. 5 Sunday evening May 12, 1957, as you had been imbibing in alcoholic beverages, had a strong odor of alcohol on your breath, unsteady in your walk and very irrational in your actions.
>
> You may have a representative or representatives present at this investigation.
>
> If the above time and date are not agreeable, please advise this office immediately and a new date will be arranged.
>
> /s/ J. M. Collins
> Manager Dining Car Department"

The investigation hearing took place May 23, 1957 following a day's postponement requested by Mr. Dudley Washington, General Chairman, Local

370. Thereafter, Mr. Mitchell was informed by letter dated June 3, 1957 from Mr. J. M. Collins, Manager, Dining Car Department, that he was suspended from service for 30 days, starting May 12 to and including June 10, 1957. This decision was appealed on June 4, 1957 to Mr. F. Diegtel, General Manager — Personnel for the Carrier. The appeal was denied by him June 19, 1957. Notice of intention of file this claim, dated October 30, 1957, was received by the Third Division October 31, 1957.

The Agreement with which we are concerned was that effective September 1, 1949, which susperseded the earlier Agreement of January 1, 1942, without however making any change in Rule 9 — "Discipline". That rule reads as follows:

"RULE 9 — DISCIPLINE

A-1

Employes will not be discharged or suspended without a fair hearing and investigation, but may be held out of service pending investigation or decision.

A-2

If an employe desires, he may be represented by a member of his committee or his General Chairman at the investigation.

A-3

Any employe removed from his position, suspended, held out of service or discharged, and upon further investigation found blameless, shall be reinstated to his former position and rank and paid for time lost."

In Employes' Rebuttal to Carrier's Ex Parte Submission it is stated that ". . . the sole issue in the claim at bar . . . purely and simply is whether Carrier violated Rule 9A-1 in suspending Claimant before it accorded him a hearing and investigation as Rule 9A-1 requires."

In support of this contention, the Organization insists that the word "suspended" can be interpreted solely as meaning discipline or punishment along with the word "discharged" to which it is joined by the conjunctive "or"; in other words that it cannot be said to mean the same thing as "held out of service pending an investigation," which the rule permits and which Carrier asserts is the only reasonable interpretation that can be given to the words "suspended from service pending an investigation" as used in the letter of May 15, 1957 (supra) sent to Claimant by the Manager, Dining Car Department. Thus, we are asked to decide whether "suspended", as used in the rule, can mean only final punishment or discipline, after a decision following an investigation, or may the word "suspended" be modified by the expression "pending an investigation" so that it means the same as and no more than the words of the rule "held out of service pending investigation or decision."

Carrier contends: "It is clear from the provisions of this rule that an employe may be held out of service (temporarily suspended from service) pending investigation or decision, but may not be discharged or suspended without a fair hearing and investigation." Carrier then points out that rules

of interpretation as set forth in previous awards all agree that we must seek the common sense meaning of the rule in cases of this kind (6404, 6009, 6222) and that we should not so interpret an agreement as to result in an absurdity (6723). And further, as was well said in Award 6856 by Refree Edward F. Carter: "Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible."

Considering first the precise meaning of the word "suspended" with which we are here concerned, it appears that Webster defines "suspend" as:

> "1. To debar or cause to withdraw **temporarily** from any privilege, office, function, etc.;"
>
> "2. To cause to cease **for a time**, . . .; to stop **temporarily**; . . .;"
>
> and the word "suspense" as:
>
> ". . . **temporary cessation**"; "suspension";
>
> and, again, the word "suspensive" as;
>
> "1. Suspending or **esp., stopping temporarily.**"

In each definition we find the thought of the arrested action as being **temporary.** (Emphasis ours.); and in attempting to express in one word the thought that an employe shall temporarily discontinue his work until a certain happening has transpired we find it difficult to avoid use of the word "suspended." In the instant case we also have the word carefully qualified by a precise modification, to wit "pending an investigation" and by the further definite statement of the short time within which the investigation was to be held, i.e. within one week, on May 22, 1957. We thus conclude that a reasonable interpretation of the rule requires a holding by us, and we so hold, that the Agreement was not violated by temporarily suspending Claimant from service pending an investigation to be held just one week later.

The transcript of evidence discloses that while Claimant was on duty in the dining car pantry a strong odor of alcohol on his breath was detected by Mr. R. H. Lloyd, Superintendent Dining Car Department, who then removed Claimant from duty and later preferred the charges against him which were incorporated in the letter from Mr. J. M. Collins, Manager of the Dining Car Department, which we have discussed at length hereinabove. At the hearing, Mr. Lloyd also testified that before he removed Claimant from duty he had asked him who was the pantry man and received a muttered reply that was incoherent; that Claimant opened the cupboard and was unable to pick up something that fell out of it; that he had to hold onto the dresser for support; that he was weaving and that his eyes were glassy.

Claimant denied being drunk or imbibing in alcoholic beverages but offered no other defense except the certificate of a doctor which stated Claimant was treated for gastritis on the day above mentioned and the day after, but which did not mention alcohol or other intoxicant in connection with the statement as to the patient's ailment, nor did it state the hour of his visit to the doctor on May 12, 1957, the day of the episode in question.

It is not our function to weigh the testimony (10015 and many preceding awards) and as there is substantial evidence in the record to sustain Carrier's

finding that Claimant had been imbibing alcoholic beverage to excess and was unfit for service, we are unable to say that Carrier was arbitarary or capricious in assessing discipline or that the penalty of suspension for thirty days from the date of Claimant's initial removal from service May 12, 1957, was unreasonable or excessive. Therefore, the claim will be denied.

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 27th day of July 1962.

Dissent to Award 10716, Docket DC-10054

It cannot be denied that Management had the right under Rule 9A-1 to hold Claimant out of service pending investigation or decision but Claimant was not "held out of service pending investigation or decision". On the contrary, he was distinctly informed by the Manager, Dining Car Department, that "You are suspended from service pending an investigation ***", which is specifically prohibited by Rule 9A-1. It is reasonable to assume that the Manager, Dining Car Department, possessed sufficient intelligence to inform Claimant that he was "held out of service pending an investigation" if that was what was intended. The extent to which the majority, that is, the Referee and the Carrier Members, have gone in an attempt to give synonymity to "suspended" and "held out of service pending investigation" as used in Rule 9A-1 is simply making excuses for the Carrier rather than applying the rule in the light of the facts contained in the record; therefore, I dissent.

/s/ G. Orndorff

G. Orndorff
Labor Member