# Award No. 10876
# Docket No. DC-12517

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Levi M. Hall, Referee**

---

## PARTIES TO DISPUTE:

## JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

## THE NEW YORK CENTRAL RAILROAD

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 370 on the property of The New York Central Railroad Company, for and on behalf of Waiter Chester Budd, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since September 30, 1959, account of Carrier dismissing claimant from service on that date in violation of the agreement and in abuse of its discretion.

**OPINION OF BOARD:** Waiter Chester Budd, Claimant, as of September 6, 1959, had the status of an extra waiter subject to assignment on a first in-first out basis from the extra board as established by Rule 4(g) of the Agreement, dated January 1, 1942. In that capacity he was subject to rules adopted by the Carrier with respect to the conduct of its business which include Rule 5, reading, as follows:

> "All employees must report for duty at prescribed times. When unable to protect assignment it is employees responsibility to notify Superintendent in sufficient time to permit relief to be provided."

It is the contention of the Carrier that on September 6, 1959, the Crew Dispatcher telephoned Claimant at his home and informed Claimant that he was assigned as Number 2 waiter for train 95, September 7, 1959, reporting time 4:30 A. M., E.S.T.; that he spoke personally with the Claimant who repeated the assignment, including the train number, and accepted it; that the Claimant did not report for his assignment to train 95 September 7 and did not protect the assignment in compliance with his obligation to do so under Rule 5 of the Carrier's rules.

Claimant, conversely, denies that he received a telephone call on September 6, 1959, assigning him to train 95 at 4:30 A. M. on September 7, 1959, but asserts that he was called on September 6, 1959 to cover an assignment at 11:00 A. M. on September 7, 1959, at Mott Haven Yards and that he did, in fact, report there before 11:00 A. M. on September 7; he further contends that there must have been some misunderstanding and that the real issue in this dispute is "whether or not Claimant actually understood that he was to report at 4:30 A. M., E.S.T., for the assignment in question."

Claimant was thereafter notified that he was to report for a hearing on September 29, 1959, with respect to his alleged failure to report for assignment Train 95. A hearing was held on September 30, 1959, and Claimant was later advised of his dismissal from service.

This Board has consistently followed certain rules applicable to the hearing of discipline cases which are enunciated quite correctly in Award 6105 (Messmore) and there is no need of repeating them here.

It is the hearing officer's responsibility to pass on the credibility of the witnesses, not ours. It appears he has properly done so. The testimony of the Crew Dispatcher as revealed by the record in regard to the alleged telephone call by him to the Claimant on September 6, 1959 was positive and clear; the testimony of the Claimant was evasive and unsatisfactory.

Some question has been raised by the Claimant as to the propriety of receiving evidence at the hearing conducted of Claimants past service record. This Board has repeatedly held that such evidence may be received to aid in determining the punishment to be meted out to an employe in case a violation of the rules has been established.

In the instant case the service record did reflect a propensity on the part of the Claimant for failing to properly protect his assignments, he having been disciplined four times previously therefor among other items of discipline. There is no merit to the contention that the discipline was arbitrary or capricious nor was the punishment harsh in view of Claimant's previous service record.

The facts and opinion in this matter are practically on all fours with Award 6660 (Wyckoff)

**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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.