

Award No. 10900

Docket No. DC-12658

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 516 on the property of the Great Northern Railway Company, for and on behalf of Walter Charles Oden, that claimant be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since November 12, 1958, account of Carrier dismissing claimant from service on that date in violation of the agreement and in abuse of Carrier's discretion.

OPINION OF BOARD On October 30, 1958, the Carrier notified the Claimant to appear for formal investigation to determine the facts and place responsibility for "the following irregularities occurring on Ranch Car 1245, Train #31, October 23rd, 1958:

1. Misappropriation of monies belonging to a revenue passenger.
2. Desertion of Duties during assigned working hours.
3. Conduct unbecoming an employee."

Thereafter, and on November 6, 1958, pursuant to the notice an investigation was held in the office of General Superintendent Dining Car. The Claimant and his representatives were present as well as representatives of the Carrier. The General Superintendent conducted the investigation. Following the investigation and on November 12, 1958, the Claimant was dismissed from the service of the Carrier. The Organization appealed from this decision to the Vice-President, Personnel Department, the highest officer designated by the Carrier for this purpose. The Vice-President, after reviewing the transcript of the investigation, declined on March 18, 1959, to reinstate the Claimant. Not until February 28, 1961, did the Organization, on behalf of the dismissed employee, file its Ex Parte Submission with this Division requesting the Claimant be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since November 12, 1958, for the reason the Carrier had violated the agreement and for abuse of Carrier's discretion.

It is contended by the Organization that the Claimant was not afforded a fair hearing because there was received at the hearing statement, of a person not present and also there was admitted oral testimony of what was orally said by the complainant passenger who was not present at the hearing. We have

reviewed carefully the transcript of the investigation, and even if the protested testimony is ignored the testimony of the Claimant shows that he knew the passenger wanted to cash a check, that she, a passenger, gave a \$50.00 check to Claimant and asked him to cash it, that Claimant gave her \$8.00; that the Claimant rendered no service to the passenger for which the balance could be considered compensation; that the Claimant, upon arrival in Seattle, went to the bank and cashed the check; that he made no effort to turn over the proceeds to any official of the railroad or to the passenger; that he kept the money until requested by the railroad's special agent, to turn it over to him. The Claimant attempts to justify his retention of the money by saying he thought it was intended as a tip. This places a heavy burden on one's credulity.

While we do not condone the careless manner in which the complainant passenger handled his or her checks, we must conclude that the investigation clearly showed an intent on the part of the Claimant to keep the \$42.00 if he could. Passengers on Trains or patrons of other public places and vehicles who patronize the services available to them expect a high degree of integrity of persons who serve them. When there is a deviation from this standard as disclosed in the investigation, it is not unreasonable for the Carrier to conclude that the Claimant's conduct was not such as could be excused; and to conclude that the Claimant was guilty of conduct unbecoming an employee.

This Division by a well established line of awards, on the primary issue raised here, will not overturn a decision of the Carrier in the absence of a finding that the discipline imposed was unfair, capricious or arbitrary. This the Division cannot do here. The claim will, therefore 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 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 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 9th day of November 1962.