

Award No. 11130

Docket No. DC-12531

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Dining Car Steward J. E. Stevens, for time lost from January 15 to and including January 20, 1961, in addition to four hours at the steward's rate of pay for attending an investigation on January 4, 1961, and for being suspended from service on account the Carrier alleged that he did not perform his duties as a Dining Car Steward in the proper manner.

OPINION OF BOARD: The Claimant, Dining Car Steward was suspended from service for 10 days as result of investigation held January 4, 1961. It is contended by the Organization in behalf of the Claimant that the notice of the charge was not specific; that the Claimant was not afforded a fair and impartial hearing, and that there was no evidence of any violation of the Carrier's rules.

First, with reference to the contention that the charge was not specific. On this point Rule 18(b) is applicable and reads as follows:

"(b) When objections or charges are made against any Steward, who has been in service more than 120 days, they shall be put in writing, conveying clearly to the accused the nature thereof."

The charge served on the Claimant reads as follows:

"1. For failure to properly perform your duties as supervisor of the car resulting in passenger complaint.

"2. It is further charged that on this date (December 7, 1960) you failed to greet a guest and that you allowed a waiter to indicate to passengers that the service was not available and that you took no steps to intercede to see that this service which the guest desired was performed.

"3. It is further charged that you did allow a waiter to engage in unnecessary discussion with passenger relative to whether service would be performed or not and failed to use your authority as Steward to prevent such unnecessary discussion."

It is to be noted that the rule requires that the charge convey clearly the nature thereof. The purpose of the charge, or notice in writing, is to

acquaint the accused in a general way with the matter under investigation which involves him. The charge, or notice, need not spell out the specific evidence to be adduced at the investigation, but should inform the person charged with sufficient clarity that he may be prepared with his defense. The Rule [18(b)] does not require a precise statement of the event out of which the charge arose. The charge here, paragraph 1, states the nature of the charge and in paragraphs 2 and 3 specific instances are described generally. We believe this meets the standard set by Rule 18.

The letter of December 21, 1960, from the Carrier to the Claimant, which set forth the charge, contained the following paragraph:

"This hearing will also include a review of your record particularly in regard to the greeting of guests and making them feel at home in our dining cars."

Before the hearing was concluded the Carrier inserted in the record of the proceeding a number of documents relating to the Claimant's past record. We have many times said that an employee's past record may be considered in assessing a penalty; but a review of an employee's past record has no place in the investigation of current charges. The purpose of the investigation was to determine the truth or falsity of the charges enumerated in the notice. By coupling a review of Claimant's record with a written statement, the only testimony produced to support the charge, we cannot find whether the Carrier made a determination of guilt solely on the written statement or on such statement and the past record. The burden was on the Carrier to produce evidence directed to the charges contained in the notice. By also including a review of old records we cannot now find that the decision of the Carrier rested solely on the testimony pertinent to the charges. We believe that by including in the hearing a review of the Claimant's past record without any showing that such was solely limited to determining the degree of penalty, if any should be assessed, the Claimant was not accorded a fair and impartial investigation. The claims should, therefore, be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1963.