Award No. 11323
Docket No. DC-11042

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter Woodrow Wilson, that he be compensated for trip, Minneapolis, Minnesota to Houston, Texas, November 4, 5 and 6, 1958, account of Carrier taking claimant out of service on these dates in violation of the existing agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant was regularly assigned to trains 507-508, Minneapolis, Minnesota to Houston, Texas and return. He reported for assignment November 4, 1958; completed that part of the assignment consisting of storing supplies and other preparatory service, but was taken out of service by Carrier's Commissary Agent just prior to departure for alleged broken stripe on his uniform trousers.

Original time claim was filed on behalf of claimant (Employes' Exhibit A), with appeal from adverse decision (Employes' Exhibit B) to the highest officer on the property designated to consider such appeals (Employes' Exhibits C & D).

POSITION OF EMPLOYES: It is the position of Employes that under Rule 11 of the agreement between the parties hereto (Employes' Exhibit E), an employe cannot be disciplined without an investigation nor suspended or held out of service except pursuant to an investigation. Employes respectfully submit that the question of whether or not claimant did in fact violate any of the Carrier's rules is not here presented. The only issue before this Board is whether or not this Carrier can circumvent the plain requirements of Rule 11 by executing, as the Carrier styles it, "a self-enforcing Circular Letter" containing its own built-in disciplinary procedure. (Employes' Exhibits B & D).

It is not disputed by the Carrier that claimant was not held out of service pending an investigation, as no investigation was held. In fact, it is clear that this Carrier either felt that an investigation was not necessary or purposely chose to ignore Rule 11, as the Carrier states in its letter of January 29, 1959 (Employes' Exhibit D), "I find that the above Circular letter is self-enforcing." In addition, holding an employe out of service for a trip or trips has always been considered discipline on the property of this Carrier and all other Carriers with which this Organization has agreements.

of December 1, 1938, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: Employes have contended in handling this claim on the property that Claimant Wilson was disciplined in violation of Rule 11 of the applicable agreement.

The Carrier has taken the position that Wilson was not subject to the provisions of Rule 11 under the prevailing circumstances.

The Carrier would be helpless in enforcing its standards of employment if it would be compelled to wait until Waiter Wilson completed his tour of duty to hold an investigation to determine if he was in compliance with Carrier's requirements applicable to his position. The investigation might be effective for future cases, but would be entirely worthless from the standpoint of compelling compliance with instructions on the immediate trip.

It must be emphasized that in handling this dispute on the property that the employes did not deny Wilson had been previously warned about the condition of his uniform. Nor did they deny that he failed to place the uniform in a state of satisfactory repair by November 3.

If the Board were to support the employes' position in this case, the Carrier would be in a position where any dining car employe could report to work in a completely disheveled condition, with a ragged, filthy uniform and under the conditions which the employes seek to impose the Carrier would be compelled to let the employe go out on his run to the embarrassment and detriment of its service.

Circular Letter No. 783, applicable to Claimant Wilson, is self-enforceable. If uniform trousers are not in good condition, employes will not be permitted to make their run. Had Wilson been suspended for time over and above that of the trip which he missed because of his failure to be properly attired, the claim might have some merit. As it now stands, however, no discipline was assessed. Wilson missed his assignment on account of his own failure to come to work in acceptable condition. By his own making, Wilson failed to qualify for the trip when he reported for work in violation of Carrier's Instructions, Letter No. 783.

Carrier asserts that its action on November 3, 1958 did not constitute discipline. Under similar instances, the National Railroad Adjustment Board has held that withholding an employe from service did not constitute discipline. (See NRAB, First Division Award 13090.)

The claim of waiter is without merit and should be denied. We respectfully request your Honorable Board to so hold.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: On November 4, 1958 Claimant reported for work as a waiter on Trains 507-508. He actually began his assignment by storing supplies and doing other preparatory work. About two hours before the train was scheduled to depart Minneapolis, the Dining Car Supervisor noted that Claimant had a torn yellow stripe on his uniform trousers. He was not permitted to cover the run. He was sent home. The claim is for time lost for November 4, 5 and 6, 1958.

Carrier contends that Claimant violated Dining Car Department Circular No. 783, paragraph 9 which reads, in part, as follows:

"UNIFORM TROUSERS

> Waiters, Lounge Car Attendants and Chair Car Attendants must keep their uniform trousers in good condition. They must be well pressed at the beginning of each run and they must have a stripe on them that is not ragged. Upon receipt of this bulletin, each Commissary Agent has been instructed to have you present your uniform trousers to him for inspection. If they are not in good condition you will not be permitted to go out on your run until you can show a satisfactory pair of uniform trousers . . ."

Claimant was warned on October 29, 1958 when a torn yellow stripe on his uniform trousers was noted by the Dining Car Supervisor. It is argued that the action taken by the Carrier did not involve discipline of Claimant.

Petitioner contends, to the contrary, that Claimant was disciplined and that Carrier, therefore, violated Rule 11, paragraph (b) 1 which reads:

> "Employes will not be suspended from service pending investigation except in cases where in the opinion of the officer in charge, retention in service might create a hazard of injury or loss of or damage to company property and when an employe is so suspended, he shall be given a statement of the charges against him."

The basic issue is whether Claimant was disciplined.

Numerous Awards have been cited by both parties. Many of them are not applicable to the facts at hand.

In Award 7210 (Cluster) we sustained a claim for 7 hours and 40 minutes pay to an employe who was not permitted to work because he reported late. His lateness that day culminated in a series of incidents when that claimant refused to report in his work clothes at his regular starting time. We found that this was a disciplinary action and that the Carrier failed to comply with Article 6, Section 1 (a) of the applicable agreement which reads:

> "Employes shall not be suspended nor dismissed from service without a fair trial and impartial trial."

It is to be noted that the claimant in that case did not violate any specific rules or work regulations.

In the dispute before the Board, Claimant not only ignored a work regulation, but had been warned only five days earlier to have his uniform trousers repaired.

A similar issue was involved in First Division Award 16521 (Loring). There, the claimant, who was a Brakeman, was held out of passenger service because the uniform he was wearing was worn, in poor condition, and unclean. There, too, the Carrier argued that the claimant was not "discharged, suspended or given a record suspension" as provided in Rule 38 of that applicable agreement. That Rule stated that "no trainman will be discharged, suspended or given a record suspension without full investigation by Superintendent . . ." The applicable agreement also had a Rule which required

Brakemen on regular passenger service "to equip themselves with standard uniforms."

The claim was denied because the claimant "persistently failed to equip himself with a standard suitable uniform for passenger service or even to have his worn out uniform cleaned".

This Board has held that a Carrier may withhold an employe from service where the action is not unreasonable, nor arbitrary, nor capricious. We have held that a Carrier may exercise discretionary powers to withhold an employe out of service for good and sufficient reason and that this is not in essence discipline. Awards 10631 (Levinson), 10838 (Ray) and 10110 (Daly).

Paragraph 9 of Dining Car Department Circular No. 783 is a reasonable work regulation. It is not contrary to any specific Rule in the Agreement. It is not unreasonable to require dining car waiters to wear clean and neat uniforms and that they be in presentable condition. Nor is it unreasonable to require that the stripe on the uniform trousers not be ragged. Carrier was not unreasonable, arbitrary or capricious in withholding Claimant out of service. This is particularly true in view of the fact that Claimant had been previously warned.

Rule 11 must be interpreted in the light of practical working situations. Certainly, no one would expect the Carrier to permit a dining car waiter to work who reported without a uniform, or if his uniform was not clean, or if he reported under the influence of intoxicating liquor, or if he was abusive to his fellow employes. It would be senseless to first require an investigation.

We hold that on the basis of all the facts in the record Claimant was not suspended from service as contemplated in Rule 11. He was merely held out of service for violation of a reasonable regulation pertaining to his work requirements. In that sense he was not disciplined.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.