

Award No. 11531  
Docket No. DC-13399

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 456**  
**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 456 on the property of the Southern Pacific Railroad Company, for and on behalf of Lounge Car Attendant Kirby Babin, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss account of Carrier dismissing claimant from service on the 30th day of August, 1961, in abuse of its discretion and in violation of the Agreement.

**OPINION OF BOARD:** On August 24, 1961, Claimant was lounge car attendant to coffee shop car 10405, operating in Train No. 102, the City of San Francisco. In a letter dated August 30, 1961, Carrier advised Claimant that he was dismissed from service because:

"After arrival of Train #102 at Reno, Nevada, the night of August 24, 1961, you were observed to go into the Wagon Wheel Liquor Store, at which time you were observed to make purchase of liquor. Later you returned to Train 102 and just before boarding that train you were stopped by Special Agent, at which time it was found that you had 10 'individual' bottles of liquor on your person. These were confiscated from you."

He was also advised that his action was in violation of Rules 7D, 11D, G, O, S, and 810 of the Rules and Regulations Governing Service by Tavern and Lounge Car Employees effective January 1, 1952.

On September 5, 1961 Employees' General Chairman requested a formal hearing in accordance with the provisions of the Agreement. After three postponements at Employees' request, such a hearing was held on November 2, 1961. Claimant was present and he was represented by Employees' General Chairman. On November 14, 1961, Carrier's Superintendent of Commissary wrote to Claimant as follows:

"You are hereby notified that the evidence adduced at the hearing conducted at West Oakland Commissary on November 2nd, 1961, fully sustains the action of the Company in dismissing you from its service on August 30th, 1961, for violation of the Rules and Regulations of the Dining Car Dept., as follows:

That portion of rule 7-D of the Rules and Regulations Governing Service by Tavern and Lounge Car Employees, effective January 1st, 1952, reading 'At station stops employees will remain on train unless required to detrain in connection with duties.'

Also those portions of the General Rules and Regulations of the Dining Car Department, effective January 1st, 1952, as follows:

That portion of Rule G reading:

'... Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty, is sufficient cause for dismissal ...'

Also that portion of Rule O reading:

'the entering into any activity not authorized by the Company on Company property is forbidden.'

Also that portion of Rule S reading:

'Employees must not transport food or liquor owned by them, on trains while on duty ...'

There is no denial that Claimant detrained at Reno; that he went into the Wagon Wheel Liquor Store; that when he was stopped by Carrier's Special Agent after leaving the Wagon Wheel Liquor Store he had in his possession 10 miniature bottles of liquor, consisting of 5 Old Grandad, 2 Old Forester and 3 Old Taylor whiskeys; that an empty Old Grandad whiskey bottle was found in his personal bag in the dormitory car; that Claimant was walking toward the train with the 10 miniature whiskey bottles in his possession when he was intercepted by Carrier's Special Agent.

Claimant contends that he detrained at Reno to purchase aspirin because he was not well; that he purchased only aspirin at the Wagon Wheel Liquor Store; that he had picked up the 10 miniature bottles of liquor from a locker before he had detrained and that he put them into his pocket to be replaced in the bar when he returned to the train.

There is evidence in the record that Claimant had complained of illness before the train arrived in Reno. There is, however, no corroborating evidence that Claimant detrained to purchase aspirin or that he did make that purchase. He did not show the aspirin purchase to any of the Carrier's Agents. Neither did he tell them about finding the 10 miniature bottles of whiskey in a locker and that he was returning them to the bar. This statement was made by Claimant for the first time at the hearing on November 2, 1961.

Carrier's Special Agent testified that he saw Claimant purchase the miniature bottles of whiskey.

Claimant had a full and fair hearing. The Hearing Officer was able to determine the veracity of the witnesses. We are in no position to resolve questions of credibility of witnesses.

In Award 11324, with the same Referee, we said:

"It is a well established principle of this Board that a disciplinary action will not be set aside unless the Carrier was arbitrary, vindictive or acted in bad faith. It is also the position of this Board that we cannot substitute our judgment for the Carrier."

Also see Awards 11017 (Dolnick), 10642 (LaBelle) and 10595 and 10596 (Hall).

Carrier's action was not arbitrary or vindictive and it did not act in bad faith. There is no justification in the record to set aside or modify the penalty.

**FINDINGS:** The Third Division of the Adjustment Board, after giving 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 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 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 14th day of June, 1963.