

Award No. 11769

Docket No. PM-13759

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: . . . for and in behalf of Jesse Lightfoot, who was formerly employed by the New York Central Railroad Company as a sleeping-lounge car attendant operating out of Chicago, Illinois.

Because the New York Central Railroad Company did, through Mr. I. L. Austin, Assistant General Manager, discharge Mr. Lightfoot from his position as a lounge car attendant for the New York Central Railroad under date of April 30, 1962, which discharge was sustained on appeal by Mr. A. H. Smith, Manager Dining and Sleeping Car Service Department, New York Central Railroad, and last officer designated by Management to handle matters of this sort.

Further because the action taken in discharging Mr. Lightfoot from the above-mentioned position was arbitrary, capricious, and in abuse of the Company's discretion because the evidence of record in the case did not prove the charges preferred against Mr. Lightfoot by the New York Central Railroad Company.

And further, for Mr. Lightfoot to be returned to his former position as a sleeping lounge car attendant for the New York Central Railroad Company with seniority rights and vacation rights unimpaired and with pay for time lost as a result of this unjust and arbitrary action in accordance with the provisions of the Agreement governing the working conditions and wages of the class of employees of which Mr. Lightfoot was a part.

OPINION OF BOARD: On May 5, 1962 Carrier dismissed Claimant Jesse Lightfoot from the service of the Company after a hearing in which he was charged with failure to prepare guest checks for sandwiches and coffee served to two Burns detectives passengers and with failure to remit to Carrier revenue derived from these sales. On two occasions, March 13 and 14, 1962, Sleeping Car Porter Cole, without submitting guest checks, received the food to serve the detectives from lounge car 594 in sole charge of Mr. Lightfoot. Before the detective passengers left the train, Mr. Cole received payment from them and alleges that he gave it to Mr. Lightfoot. Assistant General Food Control Supervisor Buschkamper did not find checks for services rendered the two detectives.

Claimant requests reinstatement on his job on the grounds that the hearing he received was incomplete and unfair. He maintains that the detectives were spies deliberately assigned by Carrier to search for dishonest employes and as such their evidence was not worthy of consideration. He objects to the fact that Cole, his fellow employe, was not charged with any violation although this porter took the orders and served the food and coffee without guest checks. He further submits his 38 years unblemished record to sustain his position that this situation arose through oversight rather than through lack of integrity.

Carrier upholds its action on the grounds that the charges placed against employe were fully proved in an impartial hearing and that the disciplinary penalty was in keeping with the severity of the charges. It maintains that petitioner had knowledge of the Rules and the consequences in the event of violation of these rules which read as follows:

Rule A-2: "When food service is desired, attendant will present menu and check together with pencil. There must be no delay in presenting check on which the guest shall be requested to write his order. Attendants shall not write meal orders on checks except under circumstances where the guest is unable or unwilling to do so. In every instance the meal order must be written on the check before any service is provided."

Rule A-10: "Any attendant who willfully fails to furnish a check to a guest when service is desired or who serves or allows to be served food or beverages without use of a check is subject to dismissal."

We have reviewed the hearing proceedings carefully and do not find basis to support Claimant's contention that he was not given a fair hearing. Petitioner was adequately represented, was aware of the charges, had an opportunity to hear and cross examine witnesses, and did testify in his own behalf. He was not restricted in his efforts to refute the charges and to present his position. We find that the testimony of the four witnesses, the two passenger detectives, his fellow employe, Porter Cole, and Mr. Buschkamper is clear and consistent. Even if we were to reject, as Petitioner suggests we do, the testimony of the detectives, the story told by Cole confirmed that of the detectives and has not been discredited. The passengers did not receive guest checks; they made payment before leaving the train rather than immediately after being served and Cole presented payment to Lightfoot. The testimony of the Assistant General Control Food Supervisor that there was a shortage of supplies, that there were no tickets issued for the two sandwiches and coffee served and that there was no accounting for these sales further confirms the other witnesses' testimony. Claimant's attempt to discredit the testimony of the detectives on the grounds that they were spies for Carrier is not a basis for discrediting other credible witnesses or denying the charge.

Petitioner employs as his defense the fact that Porter Cole was not subjected to any disciplinary charges by Carrier and that he, too, was subject to Rules A-2 and A-10. We cannot see how the guilt or innocence of Porter Cole would determine Claimant's guilt or innocence. Moreover, Mr. Cole was not bound by the same rules because of his classification. Under these circumstances it is reasonable to accept Mr. Cole's testimony that he had no knowledge of the regulations. We must place the responsibility for violating these rules with Claimant Lightfoot. We have searched the record but have failed to find clear cut denial of the charges on the part of Claimant. He says he does not remember the orders for the food and coffee served, that he did not

deliberately attempt to defraud Carrier, and that his long years of service with a clean record indicate his integrity. These are not defenses, but are proffered in mitigation. We are not unmindful of the long previous record of service of Petitioner and the serious nature of disciplinary punishment. We find from the record that he had a fair hearing in which charges were sustained. In the absence of substantial error or abuse of discretion on the part of Carrier, we refrain from setting aside or modifying Carrier's considered judgment. The Petitioner's claim is 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 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 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 October, 1963.