

**Award No. 12074**

**Docket No. DC-11612**

**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 & Pacific Railroad Company for and on behalf of Waiter-in-Charge Herbert C. Fagan, that he be compensated for net wage loss account of Carrier suspending claimant from service, February 18, 1959 to May 18, 1959, inclusive, in violation of the existing agreement.

**OPINION OF BOARD:** On January 21, 1959, Claimant was Waiter-in-Charge of the Club-Lounge Car, on the Rocky Mountain Rocket enroute from Denver, Colorado to Chicago, Illinois. Passenger, J. M. Molstad and his employe boarded the train at Colby, Kansas. On January 24, 1959, Mr. Molstad wrote to Carrier that Claimant was discourteous, made smart remarks and did not otherwise perform his duties with the dispatch and graciousness deserving of passengers who patronized the Club-Lounge Car.

Claimant was notified on February 2, 1959 that an investigation will be held on February 10, 1959 on Mr. Molstad's complaint. Specifically, Claimant was charged with the violation of Rule "N" of the Carrier's Dining Car Department General Rules which reads, in part, as follows:

"Courteous deportment is required of all employes in their dealings with the public . . .

Employes who are . . . negligent or who do not conduct themselves in such a manner . . . that their railroad will not be subject to criticism or loss of good will, will not be retained in the service."

Pursuant to the notice, a hearing was held on February 10, 1959 and on February 18, 1959, Claimant was notified that effective that date he was suspended from service for a period of ninety (90) days.

The investigation was conducted in accordance with the Rules of the Agreement. Claimant and his representative were present, they were given every opportunity to present evidence on behalf of Claimant and to cross examine the complaining witness. In every respect, the hearing was conducted fairly and objectively.

There can be no disagreement that courtesy and service are essential requirements. No railroad could long countenance an employe who did not perform his services with courtesy and dispatch. The issue to be determined is

whether Claimant, on the day in question, failed in his obligation as a courteous and considerate employe.

Mr. Molstad traveled from Colby, Kansas, to Chicago, Illinois, to attend the hearing, testify and subject himself to cross-examination. Whether he came at the invitation of the Carrier, and whether he or the Carrier paid his transportation cost is not disclosed in the record. But however he came, at whose request and at whose expense is not germane to the issue at hand. The fact is that Claimant's suspension is not alone based upon a written complaint, but upon oral testimony freely given at the hearing.

There is a conflict between the evidence of Claimant and that of Mr. Molstad. It is not for us to resolve that conflict. We may not pass upon the credibility of witnesses nor the weight of the evidence. That is reserved to the Carrier. There is nothing in the record to show that Mr. Molstad deliberately and with malice contrived to harm Claimant. Neither is there anything in the record to show that the Carrier acted arbitrarily or capriciously.

The Awards cited by Petitioner can be distinguished. In Award 11650 (Webster) the claim to set aside a suspension was sustained because the penalty was predicated alone upon a customer's letter. We found that the customer was a "vindictive person" and that the employe "was subjected to slanderous statements by the customer." In Award 10128 (Larkin) we held that a letter from a complaining passenger is "by no means conclusive without some corroborative evidence to support it." In the claim here considered the complaining passenger gave oral testimony. It then revolves around conflicting evidence which, as we have said, we may not resolve.

The guilt of the Claimant having been established, we need to consider the measure of the penalty. We find nothing in the record to show that Carrier was arbitrary, capricious or acted in bad faith. Further, Claimant's past record was not of the highest standard required in a personal service business. For these reasons we may not disturb the penalty.

**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 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 13th day of January 1964.