Award No. 12301
Docket No. PM-12404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: . . . for and in behalf of Edwin C. Washington, who was formerly employed as a sleeping-lounge car attendant with the New York Central System operating out of Chicago, Illinois.

Because the New York Central System did, through Mr. I. L. Austin, Assistant Manager, Dining and Sleeping Car Service Department, under date of August 12, 1960, dismiss Mr. Washington from his position as a sleeping-lounge car attendant with the New York Central System.

And further because the charge upon which this discipline was based was not proved, and that the nature of the evidence was such that he could not have had a fair and impartial hearing, and the penalty is therefore unjust, arbitrary, unfair and in abuse of the Company's discretion.

And further, for Mr. Edwin C. Washington to be returned to his former position as a sleeping-lounge car attendant with the New York Central System with seniority and vacation rights unimpaired and with pay for all time lost as a result of this unjust action as it is provided for in the Agreement governing the class of employes of which Mr. Washington was a part.

OPINION OF BOARD: This is a discipline case. Edwin C. Washington, Claimant herein, was formerly employed as a sleeping-lounge car attendant with the New York Central System operating out of Chicago. On May 23, 1960 he was assigned to train 358 on car No. 3583 leaving Chicago en route to Buffalo, New York. The train departed Chicago at or shortly after 7:30 P. M. on said date. The car contained six bedrooms for the accommodation of berth passengers, plus a lounge section with cooking facilities contained in an adjacent pantry from which food and beverage service was provided to passengers in the lounge section of the car. Claimant's duties included the servicing of the passengers occupying bedrooms, and also waiting on the passengers desiring meal or beverage service in the lounge section. W. L. Fields was the attendant in charge of the car on this particular trip. He remained in the pantry where he prepared food and beverage orders, which, after being prepared, were served by attendant Washington.

Two Pinkerton Detective Agency employes who were hired by the Carrier

rode the train on the night in question for the purpose of observing and reporting the conduct of all of the employes in the performance of their duties. The detectives were Barbara Aiello and W. B. Johnston. After their arrival in Buffalo they submitted written reports to the Carrier, following which, at Carrier's request, Claimant and Mr. Fields filed written statements in response thereto. Their statements were dated June 16, 1960. On June 29, 1960 written charges were filed against attendant Washington, as follows:

1. Failing to remit to Carrier certain revenue derived from food or beverage service, train 358, May 23, 1960.

2. Accepting verbal order for meal service, train 358, May 24, 1960.

3. Serving meal to guests, train 358, May 24, on verbal order.

4. Making collection for meal served guests, on verbal order, train 358, May 24, 1960.

5. Failing to remit to the Company certain revenues collected for meal served guests, train 358, May, 24, 1960.

The Carrier's Rules which are pertinent to this case, and with which Claimant was familiar, are as follows:

"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."

"A-3 Attendants may accept verbal order for alcoholic beverages or soft drinks but before serving same must prepare check to cover. Such check, properly totaled must accompany each order of drinks when served."

"A-5 When a single check is utilized for both food and bar service, all food items should appear on the upper portion of the check. All bar items shall be listed on the lower portion of the check and priced in red pencil."

"A-7 Attendants shall price and total all checks before presenting them for payment. Separate sub-totals must be shown for food service and bar service, in addition to grand total representing the sum of both."

"A-8 At completion of service, attendant will present check face down on cash tray. When payment is received, he shall in a moderate tone state the amount received and mark the amount tendered in space provided at top of check. Attendant will then return proper change to guest on cash tray."

"A-10 Any attendant who wilfully 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."

The hearing was conducted by Mr. I. L. Austin, Assistant Manager,

Dining and Sleeping Car Service. Claimant was represented by Mr. Milton P. Webster, First International Vice President of the Organization.

POSITION OF THE PARTIES

It is the contention of the Employes that the charges were not proved and that the evidence was such that he could not have had a fair and impartial hearing. Therefore, the penalty of dismissal was unjust, arbitrary and in abuse of Carrier's discretion.

The Carrier contends that the hearing accorded Claimant was conducted in a fair and impartial manner and in accordance with the agreement; that the decision finding Claimant guilty is supported by evidence of record, and that the discipline assessed was fair and reasonable and in keeping with Claimant's offenses.

It should be noted that the first charge against Claimant pertains to an evening snack meal which he allegedly served to the Pinkerton Agents about 9:30 P. M. on May 23, and that the only question involved in that transaction is whether he failed to remit whatever revenue might have been derived therefrom; whereas, the other four charges all pertain to the breakfast he allegedly served them on the morning of May 24.

The hearing was held August 11, 1960 and, on August 12, 1960 Mr. Austin wrote a letter to Claimant and the Organization notifying them that Claimant had been found guilty and that he was dismissed from service. It was contended by the Organization that Mr. Austin's prompt action in disposing of the case only one day after the hearing was definite evidence of his bias toward Claimant.

We do not agree with such contention. Claimant and Organization were duly notified of Mr. Austin's action within the 10-day time limit as provided by the Agreement. Nor do we agree with the contention made at the hearing that the testimony of the Agents was unreliable because of the nature of their employment.

The Agents' testimony at the hearing, describing the violations which they observed throughout their evening meal on May 23, and their breakfast on May 24 was supported by the on-the-spot notes which they made of Claimant's actions while he was waiting on them on both of those occasions.

Mr. Buschkamper, Carrier's Assistant Food Control Supervisor, testified that no checks had been turned in covering the particular breakfast items alleged to have been served to the Agents on May 24, and, that if such a breakfast had been served the Company did not receive any revenue for it.

Claimant testified in his own behalf and denied that he had committed any of the offenses charged.

We have carefully examined the record and have concluded that Claimant was given a fair trial. We have also concluded from such examination that Carrier's decision as to Claimant's guilt was based on substantial, competent evidence. It is not the proper function of this Board to over-rule Carrier's findings in discipline cases unless abuse of discretion or substantial error is found in the record. It is our opinion that the record discloses sufficient competent evidence to support the charges against Claimant, and we find that Carrier was justified in so holding. We also find that Carrier's action in im-

posing the penalty of dismissal was justified in view of the evidence, and in view of Claimant's record which was none too favorable.

FINDINGS: That this 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1964.