

Award No. 12362
Docket No. DC-13248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES
LOCAL 354**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 354 on the property of the Kansas City Southern Railway Company, for and on behalf of R. K. Harris, that claimant be compensated for net wage loss with seniority and vacation rights unimpaired, from the 29th day of June, 1961 until the date he was returned to service account of Carrier suspending claimant from service in violation of the agreement and in abuse of its discretion.

OPINION OF BOARD: This is a disciplinary case. The pertinent Rule of the Agreement reads:

"RULE 11 — DISCIPLINE

(a) An employe who has established seniority as provided in Rule 7 shall not be disciplined, suspended (except pending investigation) or dismissed without being advised of the charge against him, and will be given a fair and impartial trial, when same is requested in writing, which shall be held within ten (10) days after he is held from service. If discipline assessed is actual suspension time lost attending investigation shall be applied against the actual suspension time. An employe may be accompanied by his designated representative at a trial with the right to question witnesses. A record of hearing shall be taken and copy furnished the employe, if requested. When investigation or hearings are held decision will be rendered within ten (10) days after completion of hearing or investigation.

The right of appeal through the regular channels to the chief operating officer designated is conceded. However, appeals from decisions rendered must be made within thirty (30) days. All decisions on discipline cases progressed in the regular manner will be in writing. If an appeal from the decision of the chief operating officer is taken it shall be made within sixty (60) days after receipt of his decision.

(b) Employe disciplined, suspended or dismissed, who after the above procedure has been followed, is found blameless, or whose dis-

cipline is modified, shall be reinstated without loss of seniority and have his record corrected. If found blameless and unless otherwise agreed upon, such employe shall be compensated by the Company for his net loss of wages; namely, the wages he would have earned, less what he actually earned and/or amounts if any, received from unemployment insurance, while out of service."

On June 28, 1961, Carrier served notice upon Claimant as follows:

"You are hereby notified that effective 9:00 A. M., June 29, 1961, you are suspended from service as Waiter-In-Charge with the Kansas City Southern Dining Car Department, as a result of your actions as Waiter-In Charge assigned to Snack-Lounge Car on Train 16 departing Shreveport, Louisiana at 5:20 P. M. the afternoon of June 18, 1961, arriving Kansas City, Missouri the morning of June 19, 1961, at 7:20 A. M.

Within the next few days arrangements will be made for an investigation to determine the facts and place the responsibility for your actions which involve being discourteous to patrons in Snack Car, unauthorized absence from Snack Car during assigned hours, refusal of service to patrons in snack car during assigned hours and use of profane language in presence of patrons.

You may bring with you any witnesses or representation you so desire."

The time limitations as prescribed in the Agreement for the holding of the hearing was extended by agreement of the parties. It was held on July 28, 1961.

After the hearing, on August 7, 1961, Claimant received the following from Carrier:

"As a result of the Investigation held at KCS General Office Building, Conference Room, Deramus Yard, Shreveport, Louisiana, 2:00 P. M., Friday, July 28, 1961, you are suspended from service of the KCS Dining Car Department until further notice."

Petitioner contends that the indeterminate suspension from service "until further notice" is not a "decision" within the meaning of that term as employed in Rule 11, *supra*. We agree.

Lexicographers are in agreement that the meaning of "decision" is a terminating of a controversy—a final judicial determination of a question. There is nothing in the record which indicates that the word "decision" was not used in Rule 11 to convey the usually accepted meaning of that word.

The issues to be resolved in a disciplinary case are two: (1) guilt; and (2) if found guilty as charged, in whole or in part, the imposition of penalty. As to the first, the finding must be supported by substantial evidence; as to the second, it must be reasonable. Rule 11 vests an employe, or his representative, with a right of appeal through prescribed channels should he be of the opinion that the decision immediate to the hearing is not supported by substantial evidence and/or the extent of the disciplinary action imposed is excessive.

The open-ended discipline imposed — “suspended . . . until further notice” — is not a “decision” within the generally accepted meaning of that term. Being indeterminate, as it is, Claimant was effectively denied the right of appeal vested in him by Rule 11 (a) — there was no “decision” from which to appeal on a question of excessive penalty. We find that Carrier did not comply with Rule 11.

Inasmuch as Rule 11 provides that an employe shall not be disciplined unless Carrier complies with the Rule, we will sustain the claim.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1964.