

Award No. 13086
Docket No. DC-14319

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Illinois Central Railroad Company, for and on behalf of Chef Cook Andy O. James, that he be restored to service and compensated for net wage loss, with seniority and vacation rights unimpaired, since February 25, 1963, account of Carrier dismissing claimant from service on that date, in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD Claimant was discharged for theft of Carrier property, which Claimant admitted.

The employees ask that Claimant be restored with back wages because the Carrier included in the investigation a review of Claimant's past record. As a result, the employees contend that the Claimant did not have a fair and impartial trial as required under the Agreement.

In support of their conclusion, the employees rely on Awards 11130 (Boyd) and 11308 (Miller) which sustained the claim. These cases are distinguishable from this case, however, because the Board found that the Carrier had not met its burden to prove the charge independent of the past record of the Claimant. Here, the Carrier has fully met its burden by direct, probative evidence and by Claimant's admission. Therefore, whatever consideration the Carrier gave to the past record of the Claimant could not have operated to prejudice him insofar as the offense concerning which he was charged was concerned.

We approve of the long held and proper view that introduction of evidence of prior disciplinary action, not serving to show a pre-disposition to commit the offense charged, is prejudicial to the accused and would be reason to find that the investigation and hearing was unfair, where there is not sufficient evidence to support the charge independent of the past record. Since there was more than enough independent evidence to support the charge here, we do not think the introduction of Claimant's past record was prejudicial as to warrant finding that he had not been given a fair and impartial hearing as required under the Agreement.

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 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 23rd day of November 1964.