

Award No. 13397
Docket No. DC-14803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 582

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 582 on the property of the Southern Pacific Company, for and on behalf of Frank Kemp, All-Day Lunch Car Attendant, that he be restored to service with seniority and vacation rights unimpaired account of Carrier dismissing Claimant from service on January 16, 1962, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: In the instant case Claimant Frank Kemp, Lounge Car Attendant was assigned to Hamburger Grill Car 10409, El Paso, to Los Angeles on Train No. 1, December 30, 1961.

The charges arise out of the observations and reports of two inspectors from the Carrier's police department who boarded the train at El Paso and made the entire trip to Los Angeles to observe the service available to passengers, and to note the actions of the attendants insofar as the performance of their duties were concerned. This is a companion case to the claim of Arthur B. Theriot, the Claimant in Award 13396 who was No. 1 Waiter on the same car on the same day. The Claimant herein was the No. 2 Waiter.

The Claimant avers that his fundamental rights were violated when Carrier failed to advise him of all evidence it intended to present at the hearing.

We are unable to find any rule in the current agreement between the parties which requires the Carrier to furnish copies of evidence intended to be presented at the hearing. Indeed we find that the Claimant was duly advised of the acts, the doing which he was tried, and we further find the Claimant was advised sufficiently so that he had opportunity to call witnesses and produce evidence in his defense, thereby meeting the requirements of Rule 25, and we further find that Claimant was confronted by his accusers and afforded the opportunity to cross examine them.

We find that the reports of the inspectors referred to above were supported by their testimony and by the statistical record introduced at the hearing, and must conclude the Claimant had a fair and impartial trial.

We can find nothing in the record which would justify us in substituting our judgment for that of the Carrier, and for the reasons set forth, we must deny 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 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 26th day of February 1965.