

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Kieran P. O'Gallagher, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 516**

**GREAT NORTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 516 on the property of the Great Northern Railway Company, for and on behalf of Walter Savanna Fields, that he be restored to service and compensated for net wage loss, with seniority and vacation rights unimpaired, account of Carrier dismissing claimant from service on August 22, 1963, in violation of the Agreement and in abuse of its discretion.

**OPINION OF BOARD:** The Claimant seeks reinstatement and pay for time lost as a result of his dismissal from the Carrier's service as a Dining Car Waiter. The Claimant is charged with violation of the rules covering writing orders for meal checks and improper handling of monies in the course of his employment on Train No. 32, August 9, 1963.

The charges against the Claimant are of a very serious nature, because such charges reflect not only upon the employee's adherence to the rules laid down by the Carrier for the proper conduct of his work, but upon his integrity and honesty.

In the instant case the charges against the Claimant are based on the reports of two undercover operators who rode the dining car and observed the actions of the Claimant. From their testimony it would appear that inferences of violations were drawn. However, the Carrier failed to call the steward as a witness, although requested by the Claimant to do so. Indeed the statement attributed to the Carrier that the presence of the steward was not necessary because the Claimant would be found guilty despite the testimony the steward might offer, is such an unwarranted assumption on the part of the Carrier as to indicate the Carrier acted in an arbitrary and capricious manner.

In the circumstances we must sustain the claim and direct the Claimant be restored to his position with seniority and vacation rights unimpaired, and with pay for time lost, less any earnings he may have made elsewhere during the period commencing August 22, 1963 to the date of his restoration to service.

**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**

The Agreement was violated.

**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 February 1965.

**CARRIER MEMBERS' DISSENT TO AWARD 13398,  
DOCKET DC-14895**

Award 13398 is in serious error and we are compelled to register our dissent thereto.

No rules are more important to proper dining car operations than those which deal with the handling of meal checks. The Claimant, at the investigation, admitted knowledge of the rules, and admitted violation of the rules. The presence of absence of the steward from the investigation could not have changed the admitted violations by the Claimant. Furthermore, if the Claimant, or the Organization, considered the presence of the steward at the investigation essential to the Claimant's defense, they should have arranged for his presence.

The record shows that in the handling of the dispute with the highest designated officer of the Carrier, no contention was made by the Petitioner that the absence of the steward from the investigation was detrimental or prejudicial to the rights of the Claimant. Awards of the Division are legion that parties will not be permitted to mend their holds upon appeal to the Board.

The Claimant's admitted violations of the rules, coupled with his extremely poor past record, fully warranted the discipline imposed, and the claim should properly have been denied.

/s/ D. S. Dugan  
/s/ R. E. Black  
/s/ P. C. Carter  
/s/ T. F. Strunck  
/s/ G. C. White