Award No. 13514
Docket No. DC-14809

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES' UNION, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union, Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter Woodrow Macklin; that he be paid for net wage loss, with vacation rights unimpaired, account of Carrier suspending claimant from service for forty-five (45) days as a result of an investigation held on the 5th day of November, 1963, in violation of the Agreement, and in abuse of its discretion.

OPINION OF BOARD: The authorities are divided on the issue of jurisdiction. There is evidence that both parties proceeded in this matter in good faith. We are going to determine the issue on its merits. The above determination is restricted to this dispute.

The Petitioner contends that the Carrier violated Rule 11(b) (1), which provides:

"RULE 11.

DISCIPLINE AND GRIEVANCES

(b) 1. Employes will not be suspended from service pending investigation except in cases where in the opinion of the officer in charge, retention in service might create a hazard of injury or loss of or damage to company property, and when an employe is so suspended he shall be given a statement of the charges against him."

Award 11323 between the same parties has ruled on this issue wherein the facts were almost the same and the Board held:

"Rule 11 must be interpreted in the light of practical working situations. Certainly, no one would expect the Carrier to permit a dining car waiter to work who reported without a uniform, or if his

uniform was not clean, or if he reported under the influence of intoxicating liquor, or, if he was abusive to his fellow employes. It would be senseless to first require an investigation.

We hold that on the basis of all the facts in the record Claimant was not suspended from service as contemplated in Rule 11. He was merely held out of service for violation of a reasonable regulation pertaining to his work requirements. In that sense he was not disciplined."

The Petitioner complains that the Carrier did not have the right to require the Claimant to purchase the badge from the Carrier at the cost of one dollar. We find this to be a reasonable requirement. The Carrier issued the first badge and presumably the Claimant knew that the rules of the Carrier required that he purchase a replacement.

We find that the hearing was fair and impartial. The Claimant was "stubborn" to a fault and guilty of insubordination. The Claimant had other means of redress if he believed that the Carrier was in violation of the agreement.

We do not find the discipline excessive under the circumstances.

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 29th day of April 1965.