

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur Stark, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Cook Joseph Thompson from service at 1:00 P. M. on September 25, 1963 for alleged 'unsatisfactory service and would not carry out instructions' was without just and sufficient cause and on the basis of unproven charges. (Carrier's File PD-T.)

(2) The claimant be reinstated to service with seniority, vacation and all other rights unimpaired; that he be reimbursed for all wage loss suffered and that his record be cleared as per Rule 6 (a) of the effective Agreement.

**OPINION OF BOARD:** After about a year's service as Cook and twelve prior years as laborer, Joseph Thompson was dismissed on September 25, 1963, for unsatisfactory work and failure to carry out instructions. An investigation was held on October 22, 1963, following which Carrier informed Thompson that Foreman R. Faircloth's dismissal action was sustained.

Petitioner argues that the charges against Cook Thompson were not proved and, even if they were true, the discharge penalty was unreasonable and excessive.

At the October 22, 1963 investigation, testimony was presented by Thompson, Faircloth, Principal Assistant Division Engineer E. S. Laws, Laborer P. Edwards, Cook P. Campbell, and Roadmaster S. L. Woods. This testimony reveals Thompson as a man well able to perform laborer functions, but woefully inadequate as a Cook. During Thompson's relatively short term as Cook, Foreman Faircloth had to admonish him frequently about the lack of cleanliness in the kitchen. On several occasions he warned Thompson that he would have to clean up the kitchen and keep it clean if he expected to remain in service.

Roadmaster Woods, who inspected the kitchen on several occasions, confirmed Faircloth's assessment of its condition. On one of these occasions, in fact, he admonished Faircloth that it would be necessary to either

keep the kitchen clean or get another cook. Engineer Laws noticed the dirty condition of the kitchen just a week before Thompson's dismissal. Cook Campbell, who took over after Thompson's termination, recalled the filthy condition of the kitchen, food unfit to use, rat droppings, and the like.

It was against this background that Foreman Faircloth raised the question of Thompson's work again on the morning of September 25, 1963. It is true that the immediate cause for Faircloth's concern was a relatively trivial incident the previous evening (Faircloth had left instructions for the cook to keep his dinner for him, but when he arrived, Thompson was not there, although the meal was on the stove). However, the Foreman repeated his warning that "if you don't change and get the kitchen cleaned up and carry out my instructions like I told you, I am going to ask for another cook because I will have to take you out of service." Thompson retorted: "... give me a PR-2 and I will go to the office and talk with Mr. O'Quinn and Mr. Harrell." Faircloth considered what to do the rest of the day and then handed Thompson his dismissal slip.

It cannot be said, on the basis of the information revealed at the investigation, that Carrier's decision to dismiss Thompson from his Cook's position was without foundation. Nor was the penalty excessive in light of Thompson's failure to improve after repeated admonitions. It is unfortunate that he held no seniority rights to a laborer position since, clearly, his performance in that capacity had been thoroughly satisfactory. But, under the circumstances, it cannot be held that Carrier acted arbitrarily or capriciously when it determined that Thompson was unfit for cook's work.

**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 30th day of September 1965.