Award No. 13953

Docket No. DC-15122

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: For and in behalf of E. E. Bryant who was formerly employed by the Dining Car Department of the Chicago, Burlington & Quincy Railroad Co. as a chair car attendant.

Because the CB&Q Railroad Company did under date of June 30, 1964 take disciplinary action against Mr. Bryant by dismissing him from his position allegedly for violation of Rules 39, 41 & 48 of the General Rules and Standard of Service Manual for the Guidance of all Employes of the Dining Car Department, and so forth. And further, for Mr. E. E. Bryant to be returned to his former position in the Dining Car Department with seniority rights and vacation rights unimpaired and with pay for time lost as a result of this unjust discharge.

OPINION OF BOARD: Claimant was dismissed from service as of June 30, 1964, after having been found guilty of violating Rules 39, 41 and 48 of the Carrier's operating rules governing the conduct of employes of the Dining Car Department.

The facts are that on May 29, 1964, Claimant worked an assignment as Coach Porter on the Afternoon Zephyr, running from Minneapolis, Minnesota, to Chicago, Illinois. He was assigned to two coaches (Nos. 4723 and 201) immediately behind the dining car. An elderly couple boarded the train at Minneapolis and were seated in Car 4723. Their destination was Savanna, Illinois, but they were carried beyond that point.

To determine responsibility for the failure to detrain these passengers at Savanna, the Carrier conducted an investigation on June 17, 1964. All members of the train crew—the conductor, brakeman and claimant coach porter—were given timely notice, and required to attend this proceeding. Each was represented, given the opportunity to call witnesses, and to testify. No witnesses other than the aforesaid crew members were called, but the Carrier called and took testimony from a train investigator who had been present in the same car, No. 4723, with those passengers who were carried beyond their destination.

The Brotherhood alleged that the notice of investigation served upon Claimant was fatally defective in not setting out the precise charge against him. The notice was dated June 5, 1964, well within the 15 day period prescribed by paragraph (c) of Rule 26, and read in pertinent part, as follows:

> "Attend investigation in Assistant Superintendent's office at North LaCrosse, Wisconsin, at 1:00 PM CST, June 8th, 1964, for the purpose of ascertaining the facts and determining your responsibility in con-

nection with failure to detrain passengers destined for Savanna, Illinois from Train #24 at Savanna, Illinois at about 7:50 PM on May 29, 1964."

The allegation of defective notice was not raised at any time during the progress of the dispute on the property although an opportunity to do so occurred at the beginning and end of the formal investigation. Such failure to make timely objection has been held by the Board to constitute a waiver and estoppel. (See First Division Award 17460; Second Division Award 1788; Third Division Award 4239). Here, however, we are not persuaded that a finding of waiver is required. It is clear from the wording of the notice, taken together with the fact that it was served within a few days after the incident occurred, that it was sufficient to fully apprise Claimant of the nature of the offense charged, i.e., his responsibility for failure to detrain passengers. Accordingly, Claimant should have known how to prepare his defense. We have consistently held that if a notice is timely and so worded as to fully apprise the accused of the nature of the offense charged, so that he may become prepared to defend himself, then such notice is valid and legally sufficient. (See Award 12738, citing Awards 1170, 4781, 5026, 6866). Here we find that the notice served upon Claimant was sufficiently precise to meet the requirements of Rule 26.

The main thrust of the Brotherhood's argument on the merits in this case appears to be that the Carrier committed prejudicial error when it accepted as credible the testimony of a paid investigator who was present when the events giving rise to the disciplinary action occurred. We find no merit in this contention. A review of that testimony shows no prejudice on the part of the witness toward the accused nor can it fairly be said to have been adduced solely to incriminate him. It was clearly an account limited to what the witness observed at the time, and, as such, was credible. The fact that the witness was a paid investigator for the Carrier, standing alone, is not sufficient grounds to support the allegation of prejudice or discrimination. (See Awards 4716, 8334, 13129, 13670).

In view of the foregoing, the Board finds Claimant's contractual rights to a fair and impartial trial were not abrogated.

Moreover, in the light of Claimant's personal record in evidence here, the Board will not disturb the measure of discipline imposed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1965.