

Award No. 14068

Docket No. DC-15511

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Eugene Lambert, Lounge Car Porter, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss, account of Carrier dismissing Claimant from service as a result of investigation held on November 16, 1964, in violation of the Agreement, and in abuse of its discretion.

OPINION OF BOARD: The Claimant, an employee with many years' seniority, was assigned as Lounge Car Porter to Lounge Car 479, Train No. 18, arriving Minneapolis, August 27, 1964. On that day, Operatives No. 61 and 63, mother and daughter, were riding as passengers in the lounge car. Subsequently a report was submitted that the Claimant served a miniature bottle of Old Grand Dad bourbon to Operative No. 61, which was corroborated by the daughter, Operative No. 63.

Upon receipt of said report, the Carrier checked Claimant's Record of Bar Supplies. It was determined that his inventory records balanced with the other employees' records, after proper adjustments. Further, Claimant's sales report also balanced with the cash receipts from sales which he turned over to the Carrier.

However, it was also uncovered that Claimant had not reported any sale of Old Grand Dad miniature bottles on said trip. Although Claimant's remittal of revenue for the said trip balanced with his inventory, he was charged with violating Rule "N", failure to report the sale of Old Grand Dad and failure to remit revenue for said sale.

The pertinent portion of Rule "N" of Carrier's General Notice and General Rules, Form G-147, reads as follows:

"Employees who are . . . dishonest . . . will not be retained in the service."

An investigation was thereafter held to determine the factual veracity of the Operatives' report. On the basis of the testimony adduced at the hearing, the Carrier concluded that the Claimant had served one miniature bottle of Old Grand Dad bourbon for which he did not remit any revenue. Consequently, he was terminated, effective November 28, 1964, as a disciplinary penalty.

Subsequently, the Carrier offered to reinstate the Claimant on a leniency basis, as of January 4, 1965, without prejudice to his right to pursue a claim for lost pay. This offer was rejected by the Organization.

On January 5, 1965, Claimant was involved in an automobile accident which incapacitated him for approximately one month. Finally, on February 5, 1965, he was reinstated to service.

In analyzing the facts, we feel that the Carrier's position is untenable. It appears pointless to belabor the issue. Nevertheless, in passing, reference should be made to the Carrier's anomalous position. On one hand, it conceded that the Claimant's inventory record was correct, as well as receiving full remittance of revenue for all items charged. On the other hand, the Carrier argues that the Claimant failed to enter a sale of Old Grand Dad plus failure to remit revenue for same. Both positions are incompatible and inconsistent. The most that can be said in favor of the Carrier's position is that the Claimant, if guilty at all, was careless. He posted an erroneous entry in his record so that the brand of whiskey sold was noted in the wrong column.

This type of error should not and cannot be equated with dishonesty—vile and opprobrious conduct meriting discharge.

It is, therefore, the opinion of this Board that the Claimant, having been previously reinstated, is also entitled to be compensated for lost pay during the period of his termination, namely, from November 28, 1964 to January 4, 1965. The basis for selecting this period is twofold. On January 4, 1965, the Carrier offered reinstatement, without prejudice, to his right to seek monetary damages for lost time. In addition, he met with an accident on January 5, which incapacitated him until his actual reinstatement.

Hence, he shall be paid for the designated period in accordance with Rule 11 (h) of the effective agreement, "for all wages he would have earned had he not been suspended or dismissed, less amount earned in any other 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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1965.