Award No. 14192
Docket No. DC-15570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES' LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter Walter Glenn that he be compensated for net wage loss during ten (10) days suspension arbitrarily imposed by Carrier in violation of the agreement between the parties hereto.

OPINION OF BOARD: Claimant, Waiter Walter Glenn, was notified on July 3, 1964, under Rule 11 of the Dining Car Employes' Agreement as follows:

"July 3, 1964

File: PR-4715

REGISTERED MAIL

Mr. Walter R. Glenn
7151 South Vernon Avenue
Chicago 19, Illinois
Dear Sir:

You are hereby notified that an investigation will be held for and in your behalf on Thursday, July 9, 1964 at 10:00 A. M., C.D.S.T. in the office of the Gen. Supt. Dining and Sleeping Cars, 164 West 51st Street, Chicago 9, Illinois, to develop the facts, discover the cause and determine your responsibility if any, in connection with a report received in my office on June 29, 1964 that while you were assigned as Dining Car Waiter to Dining Car 427, Train No. 4 arriving Chicago June 17, 1964 you were abusive toward Dining Car Steward W. M. Wattles, threatening him with bodily harm and using foul language in your conversation with him, in violation of Rule 'N' of the Gen. Notice and Gen. Rules, Form G-147, Revised which reads as follows:

> 'Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other. Employes who are careless of the safety of themselves and others—insubordinate—quarrelsome or otherwise vicious—will not be retained in the service,'

or the violation of any other rule in connection therewith.

Please arrange to be present with your representative and any such witnesses as you may desire as provided for in the Joint Council Dining Car Employes Local 849 Agreement.

Yours truly,

/s/ M. H. Bonesteel
General Superintendent
Dining and Sleeping Cars

cc: Mr. C. L. Patrick"

Because of Claimant's illness the investigation was postponed until November 25, 1964 and on December 4, 1964 Claimant was suspended from service for ten (10) days. The transcript of the trial is reproduced on record pages 27 through 62.

Employes appealed this decision and progressed their appeal to Carrier's Vice-President, Labor Relations, the highest officer on the property designated by Carrier to consider appeals. The appeal was denied and the Employes served notice of their intent to file a submission before this Board.

The Employes contend that Claimant was denied a fair and impartial hearing in the following respects:

1. Carrier scheduled the investigation at a time when some of the crew, present when the incident forming the basis of the charge took place, could not appear.

2. The hearing officer's refusal to instruct Carriers witness to answer question asked by Claimant's representative.

We will consider these issues separately.

I

Rule 11(i) of the Agreement provides:

"(i) When an employe not involved in the matter being investigated is required by the Carrier to be present at an investigation as a witness, he shall be paid for actual hours of service lost at rate applicable to his classification. The Carrier will not be required to pay an employe called as a witness by the 'duly accredited representative' or the employe under investigation."

Both Carrier and the party charged have the right to call witnesses. Under the above quoted Rule 11(i) the party calling the witness must bear his expenses.

This Board has held many times that the party charged is free to call witnesses as he desires.

Award 12492 (Ives) states:

"* * * Had the Claimant desired to have other witnesses called who had knowledge of the circumstances, he was free to call them. (Award 6067)."

See also Awards 8504 (Daugherty), 13295 (Zack), and 13643 (Bailer).

We can find no evidence in the record that the Claimant made any attempt to interview or call witnesses on his behalf. If surprise witnesses were presented by Carrier or if essential witnesses were not available the Claimant had the right to a continuance.

We note that there is no dispute that prior continuances were at the request of the Claimant.

II

We feel that Claimants second contention is without merit. Upon a careful review of the trial record we feel that all of the representative's questions were fully answered and proper cross-examination was granted.

The conduct of the Claimant was confirmed by the brakeman, a disinterested party.

It is well settled that this Board cannot and will not attempt to adjudge the credibility of witnesses. Award Nos. 9326 (Rose), 13129 (Kornblum), 13117 (Hamilton), and 12816, 12811, 11775, 10595, 10596, 10876 (Hall).

We feel that under the circumstances of this case the Carrier was justified in assessing the 10-day suspension.

The claim will be denied.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.