

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370
THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of the New York Central Railroad Company, for and on behalf of Waiter L. Terry, that he be restored to service with seniority and vacation rights unimpaired and compensated for net wage loss since June 2, 1965 account of Carrier taking Claimant out of service on that date and not according Claimant a hearing in violation of the agreement between the parties.

OPINION OF BOARD: It is Carrier's position that based on reports of poor service rendered in its dining cars by Waiter Walter L. Terry, who was assigned to a twin unit dining car on the Twentieth Century Limited, it concluded Waiter Terry "lacked fitness and ability on the twin-unit dining cars and also lacked fitness and ability to work on smaller cars where but a single waiter was assigned."

On June 2, 1965 Carrier advised the Claimant: "You presently lack fitness and ability for work as dining car waiter. Accordingly, you are hereby disqualified for service in that classification."

Carrier advised the Organization Claimant "has been disqualified under Rule 4 (a)."

That Rule covers the subject of Qualifications, but a careful reading of the Rule reveals that it is related solely to the exercise of seniority — bidding and displacement rights, and promotions to higher rated positions covered by the agreement — in all of which the management is the sole judge of the applicant's qualifications for the job he seeks.

It clearly does not support the Carrier's position here.

Carrier here advised and charged the Claimant:

"You presently lack fitness and ability to work as a Dining Car Waiter. Accordingly you are hereby disqualified for service in that classification."

The effect of Carrier's action was to suspend him from further service as a Dining Car Waiter.

Rule 6 states that employes shall not be . . . suspended . . . without a fair and impartial trial." Claimant was not accorded a trial.

Carrier's action was a violation of Article 6 of the Agreement.

We will sustain this claim for his net wage loss from June 2, 1965 to October 14, 1965 when he voluntarily resigned to apply for an annuity.

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 violated,

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1966.