

Award No. 16032
Docket No. DC-16740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD TRAINMEN
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Request for lost earnings in behalf of Dining Car Steward A. Moll for time lost commencing August 3, 1965, and subsequent dates of record when the claimant was held out of service by the Carrier.

OPINION OF BOARD: On August 3, 1965, Dining Car Steward A. Moll was suspended from service and notified in writing of his failure to follow Carrier's instructions concerning meal checks when he was on duty on Train No. 103 from Chicago, June 24, 1965, and on Train No. 104 from Los Angeles on June 27, 1965. The specific charges were as follows:

1. Failure to issue meal checks to cover all meals served during this trip.
2. Failure to supervise waiters properly so that they did not accept verbal orders instead of a written food check for meals.
3. Failure in following Carrier's instructions in handling meal checks with a resultant loss in revenue for Carrier.
4. Failure to keep the food costs for the trip in line with the food cost on other comparable trips by other stewards.
5. Failure to keep the average revenue per meal in line with that served by other stewards.

After a hearing held on August 9, 1965, Mr. Moll was advised of the findings of the investigation and of his dismissal from service.

Mr. Moll contends that he was not accorded a fair investigation, and for this reason he and his representative left the hearing before the investigation was concluded. He maintains that Superintendent Jones was not a proper person to conduct the investigation inasmuch as he was the official who

dismissed him from service on August 3 and filed charges against him as he had done on a previous occasion for similar alleged offenses. Moreover, members of his crew, particularly the chef who was involved in Carrier's charges, was not made available at the investigation. He also asserts that the evidence adduced at the hearing did not support the charges.

Carrier states that the conduct of Superintendent Jones was fair and impartial and that Claimant was not deprived of any of his rights, including proper representation, the right to interrogate witnesses, and the opportunity to hear oral testimony or examine documents. Furthermore, it maintains that the charges were proven and the discipline imposed was commensurate with the offenses.

The transcript of the investigation reveals that the Claimant and his representative at the hearing expressed considerable dissatisfaction and irritation with the hearing officer and the conduct of the investigation. Despite this attitude, the conduct of the hearing officer did not prejudice the rights and interest of Mr. Moll. Prior to the hearing, Steward Moll made no request for the presence of such witnesses as the Chef. During the hearing when the hearing officer asked him if he wished to call other witnesses Claimant made no such request; nor did he ask for a delay in the hearing to afford time for Carrier to make them available. Although Carrier has a responsibility to present evidence to support its charges, it is not required to call every witness who might have some knowledge of the incident. Thus, we do not find that the investigation was defective because Carrier did not call the Chef or other members of the crew as witnesses in presenting its proof. The conduct of the investigation was fair and impartial.

Careful examination of the record leaves considerable doubt as to whether the evidence offered supports all the charges for which Mr. Moll was found guilty. It does, however, show that he was guilty of failure to comply with Carrier's instructions for supervising waiters in regard to the handling of meal checks. Since he was not found guilty of all the charges we find that the disciplinary action was too severe.

Mr. Moll was out of service from August 3, 1965 to January 31, 1966. During this period he was reinstated, but because of health reasons was not approved for service. The period that he was held out of service for discipline was from August 3 to November 4, 1965. We reduce the penalty to 30 days and, accordingly, direct that Claimant be compensated for the time he lost beyond the 30 days he was held out of service for disciplinary reasons between August 3 to November 4, 1965.

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 violated.

AWARD

Claim sustained in part in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of December 1967.