



Award No. 16308
Docket No. DC-16739

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Request for time lost, in behalf of Dining Car Steward A. A. Martinelli when the Carrier removed him from service for sixty (60) days effective August 3, 1965.

OPINION OF BOARD: Claimant, a dining car steward, was suspended by Carrier for sixty (60) days effective August 3, 1965 for rude and discourteous treatment of numerous passengers who were dining car guests on July 19 and 20, 1965. Petitioner contends that Claimant was improperly suspended by Carrier because (1) he was taken out of service prior to the investigation; (2) he was denied a fair and impartial investigation; and (3) the facts developed at the investigation do not support the charge.

It is the Carrier's position that Claimant was afforded a fair and impartial investigation which established that he was discourteous to passengers and that Rule 18 (Discipline and Grievances) of the controlling Agreement does not prohibit Carrier from withholding an employe from service prior to an investigation.

Rule 18 (a) states that "Stewards who have been in service more than 120 days will not be disciplined, dismissed or disqualified without a fair and impartial investigation." However, Rule 18 (c) in part provides as follows: "(c) . . . if held out of service pending an investigation, then the investigation must be held within seven (7) days."

The record reveals that the investigation was held within the prescribed time limitation and the pertinent provisions of the Agreement clearly recognize the Carrier's authority to withhold Claimant from service prior to the investigation. Awards 9345, 13295, and others.

The notice of investigation set forth the exact Nature of the Charges and the "written" evidence introduced at the investigation was offered in accordance with Rule 18 of the Agreement. No discovery procedure is provided by the terms of the controlling Agreement, and Claimant was not deprived of any contractual right to receive advance copies of written evidence introduced by Carrier at the investigation. Awards 14187, 13670 and others.

Analysis of the hearing transcript fails to disclose that Carrier's interrogating officer was either arbitrary or arrogant as alleged by Petitioner. Furthermore, prejudicial error does not arise from the fact that the inter-

rogating officer also signed the notice of investigation which contained the charges against the Claimant. He had no personal knowledge of the charges and did not testify at the hearing. Moreover, successive appeals were available. Awards 15744, 12898 and 128111.

Finally, Petitioner contends that the investigation was not conducted in a fair and impartial manner because the evidence presented against him consisted of written statements from employes of another Carrier and a passenger, who did not appear at the hearing. Petitioner urges that Claimant was improperly denied an opportunity to confront and cross-examine his accusers, and that Rule 18 of the Agreement was violated.

Rule 18 (d) of the controlling Agreement provides as follows:

"(d) Stewards shall have the right to be present at investigations with an employe of their own choice who shall have the right to interrogate witnesses and to hear all oral and read all written testimony and to bring out any facts in connection with the case."

No prohibition is found against the use of written statements nor is there any requirement that a witness who submits a statement must be available for cross-examination. Numerous awards of this Board have held that written statements of witnesses not present at an investigation are admissible in the absence of contractual prohibition. Awards 10596, 9624, 9311, 8504, and others.

In this case, the record contains several written statements supporting Carrier's charges which have been denied by Claimant. However, no corroborating evidence has been offered by Petitioner to support the Claimant's testimony or otherwise refute the competent written evidence offered by Carrier. In view of the foregoing, we must conclude that Rule 18 of the Agreement was not violated by the Carrier and that the penalty imposed was neither arbitrary nor capricious. Accordingly, the claim must 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

Keenan Printing Co., Chicago, Ill.

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