



Award No. 17155

Docket No. DC-17812

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—DINING CAR DEPARTMENT—**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Atchison, Topeka & Santa Fe Railway, for and on behalf of Waiter Cornelius Watson that he be returned to service and compensated for net wage loss with seniority and vacation rights unimpaired account of carrier suspending claim from service on September 17, 1967, and dismissing claimant from service on October 14, 1967, in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD: Claimant, Cornelius Watson, a waiter on an Atchison, Topeka and Santa Fe train on August 7, 1967—and an employee of Carrier for sixteen years, was charged with:

- (a) Accepting a meal order verbally;
- (b) presenting a check not written out by the guests;
- (c) presenting a check, in fact, used to serve and collect from other guests.

Claimant was advised by letter dated September 15, 1967, that he was "being withheld from service" by the Carrier by virtue of the above alleged acts. On October 5, 1967, Claimant requested a hearing, which was held October 12, 1967. On October 14, 1967, Claimant was advised by letter that the Carrier's decision on the hearing was:

"The suspension from service of Cornelius Watson effective September 17, 1967, shall become that of a full discharge this 14th day of October, 1967."

Carrier would have us dismiss on the grounds that the claim here advanced and that which was handled on the property were "substantially different." Although employees' letter of appeal merely requested a reversal, employees' representative at the hearing did preserve the claim before us now by asking for reinstatement, compensation, etc.

Claimant does not dispute the facts, and since this Board does not weigh the evidence de novo, we look to Claimant's arguments that his sus-

pension was invalid, that the penalty imposed was in excess of the original discipline, that he was denied a fair hearing by Carrier's failure to produce a material witness, and that, in any event, dismissal was an excessive penalty and an abuse of Carrier's discretion.

We can find no authorities to support Claimant's requests for a favorable ruling.

The right to suspend an employe during a timely investigation where the Agreement is silent to the contrary has long been recognized by this Board. (Awards 16602, 9435, 16308.) When the Agreement was negotiated and consummated, it could not have been within the contemplation of the parties that one suspected of fraud or any sort of dishonesty should be kept employed by Carrier until the proof was met.

The right to discipline an employe after his suspension and hearing cannot be challenged on the grounds that suspension was discipline and that dismissal was a reassessment and change in excess of that original discipline. Nor can it be allowed that the dismissal was excessive and an abuse of Carrier's discretionary powers in the case before us. Suspension is not in and of itself a discipline, but merely a procedural step to a final determination. Claimant can not contend that suspension was invalid and then claim that where you have a suspension that further and different discipline will not lie. Both will and do. As this Board has said we will not disturb the evidence or substitute our judgment for that of Carrier as to the measure of discipline that is appropriate (Award 13674), as long as it was not excessive (Award 13130), nor arbitrary or capricious (Award 16171). We have held that dishonesty, in any form, is a matter of serious concern and that dismissal from the service because of it is not an excessive application of discipline nor an abuse of discretion. (Awards 16168, 16170).

The burden of producing witnesses, as in this case the train steward and alleged co-conspirator, was on the Claimant. When Carrier makes a prima facie case against Claimant, the burden then shifts to Claimant to call whatever witnesses necessary to provide himself with an adequate defense. Awards 6067, 8504, 12492, 13643). in the instant case there was no charge that Carrier had tried to secrete the steward. The notice of hearing requested Claimant's presence with "such witnesses as he may desire." Having failed to ask for an adjournment for this purpose, Claimant cannot now be heard to complain that he did not have a fair and impartial hearing. (Award 13643).

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.

A W A R D.

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 19th day of May 1969.