



Award No. 17243

Docket No. DC-18106

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 465
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 465 on the property of the Union Pacific Railroad Company, for and on behalf of Waiter QUINCY D. ETHERIDGE that he be restored to service and compensated for net wage loss with seniority and vacation rights unimpaired account of carrier dismissing claimant from service on June 21, 1968, in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: The Claimant, a waiter in the Carrier's employ, was dismissed from service on June 21, 1968 for allegedly violating Carrier's Rules 700, 700(A) and 708 of the Rules and Instructions of the Dining Car and Hotel Department, effective December 1, 1952. These rules provide:

"700. Employees who are careless of the safety of themselves or other, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that the railroad will not be subjected to loss of good will or criticism will not be retained in the service.

"700(A). Employees involved in irregularities in the handling of dining car meal checks or company funds, or who mishandle company funds or property, will be discharged from the service.

"708. Employees must not permit discrimination. Unless specifically authorized, employees must not use the railroad's credit and must neither receive nor pay out money on the railroad account. Property of the railroad must not be sold nor in any way disposed of without proper authority."

An investigation hearing was held on this matter on July 5, 1968, pursuant to due notice and Claimant attended and was represented at the hearing and had fair opportunity to present his case and to question complaining witnesses.

The Carrier's specific allegation against the Claimant is that he took possession of and/or transferred to others the Carrier's property as revealed by two episodes:

1. On June 21, 1968, the wife of the Claimant's son telephoned the Carrier's Special Service Department that her father-in-law had been removing certain items from dining cars and that he brought many of these items to her apartment. She requested that the Special Service people come to her apartment and obtain the Carrier's property. Special Service officers went to her apartment and found a considerable amount of silverware, glasses, dishes and other dining car equipment belonging to Carrier, some of it carrying Carrier's identification. Said daughter-in-law then signed a statement that all items given to the Carrier's representatives were brought to her house by her father-in-law over her objections.

2. On June 21, 1968, Carrier's Special Service Officers went to the home of Claimant, introduced themselves and received oral and written permission from the Claimant to look through his house for Carrier's property. They thereupon found a quantity of silverware, glasses and various linen items identifiable as property of the Carrier used on its dining cars.

The Claimant's Organization contends that (a) the evidence did not support the charges in that it was not established that the Claimant was seen transporting the material from one place to another, (b) the search of the Claimant's home was in violation of his civil rights and civil liberties inasmuch as it was conducted without a search warrant, (c) the evidence given at the hearing is defective in respect to the charge made that the claimant had transported Carrier property to the home of his daughter-in-law in that she was not called to testify and the accused was thereby deprived of the right to face his accuser.

Careful consideration of the entire record establishes that the charges have been probatively supported. On the basis of said record, we further find that the action taken by the Carrier in the dismissal of this Claimant was an appropriate disciplinary recourse within its proper discretion. We will therefore deny the claim.

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 Carrier did not violate the Agreement.

A W A R D

The claim is denied.

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

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

Dated at Chicago, Illinois, this 25th day of June 1969.