

Award No. 18334
Docket No. DC-18617

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (Dining Car Department)**

STATEMENT OF CLAIM: Claim of Joint Council Dining Employees Local 351, on the property of The Atchison, Topeka & Santa Fe Railway Company, for and on behalf of Chef George Kurtz that he be compensated for net wage loss from June 15, 1969 to August 14, 1969, inclusive, account of Carrier suspending claimant from service during this period in violation of the Agreement and in abuse of its discretion.

OPINION OF BOARD: Claimant was charged by Carrier as being in violation of Rules 16 and 17 of the Agreement on Dining Car 1497, Train No. 16 on March 14, 1969, and on Dining Car 1498, Train No. 15 on June 11, 1969 for: "(1) Poor and improper food preparation and mismanagement of kitchen; (2) Failure to follow corrective instructions in your cooking; (3) Insubordination to a representative of the Company in the person of Mr. Curtis Jefferson, Traveling Instructor in Food Preparation." After hearing was held on June 25, 1965 in regard to said charges, Carrier's Supervisor of Personnel, B. R. Golt, by letter dated June 27, 1969, advised the Organization's President of Local Union 351, H. L. Stevenson, that in regard to charge No. 3, Claimant was temporarily suspended from Carrier's service for a period of 60 days commencing June 15, 1969.

Carrier offered to reinstate Claimant on a leniency basis effective August 6, 1969, which was unacceptable to the Organization and to the Claimant.

The Organization's General Chairman, W. S. Seltzer, by letter dated August 28, 1969, to Carrier's Manager-System, John R. Baird, contended that there wasn't any evidence presented at the hearing proving that Claimant was guilty of the charge of being insubordinate to Carrier's Curtis Jefferson; that Claimant suffered intimidation and coercion from threatening language and harsh manners exhibited by said Curtis Jefferson; that Claimant was not afforded a fair and impartial investigation by the hearing officer, B. R. Golt; that the Carrier added the second date of June 11, 1969 for the sole purpose of adding weight to other alleged charges that were subsequently dismissed by Carrier's hearing officer in his June 27, 1969 written decision.

Close examination of the record fails to disclose any proof indicating that Claimant was intimidated by Carrier's Curtis Jefferson or that Claimant

was not afforded a fair and impartial hearing or that Carrier added the second date of June 11, 1969 for the sole purpose of adding weight to other alleged charges.

Therefore, we must determine if Carrier met its burden of proving that Claimant was guilty of "Insubordination to a representative of the Company in the person of Mr. Curtis Jefferson, Traveling Instructor in Food Preparation," the basis for Carrier's decision in temporarily suspending Claimant from Carrier's service.

This Board, in a long line of Awards, has consistently held that our function in a discipline case is not to substitute our judgment for the Company or decide the matter in accordance with what we might or might not have done had it been ours to determine but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty.

A review of the record clearly shows that Carrier presented substantial evidence to sustain a finding that Claimant was guilty of "Insubordination." Further, we do not find that the penalty imposed by Carrier in this instance was so unjust, unreasonable or arbitrary as to constitute an abuse of discretion. Therefore, we are compelled to 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 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 December 1970.

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