



Award No. 18550
Docket No. DC-18786

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

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

STATEMENT OF CLAIM: Claim of the Joint Council of Dining Car Employees Local 351, on the property of The Atchison, Topeka & Santa Fe Railway Company, for and on behalf of Waiter Carl L. Thompson that he be compensated for all time lost for the period commencing October 2, 1969, until reinstated on or about December 31, 1969, and his record cleared of the charges contained in a letter dated October 2, 1969.

OPINION OF BOARD: Claimant was a lounge car attendant on Train No. 24, Lounge Car 1391, on August 25, 1969. Under date of October 2, 1969, Claimant was notified by Carrier that he was being held from service instantler because it was alleged that on the above date, Claimant used vulgar language, was rude to two passengers in the above mentioned lounge car, and failed to render the required service to the passengers. This conduct, Carrier claimed, violated Rules 17 and 18 of the applicable Agreement. Rules 17 and 18 are General Rules for the guidance of employees.

The hearing was held on October 15, 1969, at which time testimony was heard from two witnesses present in the lounge car at the time of the alleged infraction. Mr. Griswold testified that Claimant used vulgar language directed at him; was rude to him; and during his entire stay in the lounge car was never offered assistance or service. Witness McPherson, while denying that he heard Claimant use any vulgar language, testified that Claimant was fussing at them because Griswold had spilled coffee in the lounge.

As a result of this investigation Claimant was withheld from service without wages for a period of ninety days with his seniority unimpaired. No procedural objections were raised to the conduct of the hearing. The sole issue raised by Petitioner is whether or not the evidence adduced at the investigation was sufficient to support the charges and the subsequent discipline?

The policy of this Board involving discipline cases is so well established as to be uncontroverted. This Board will not weigh the evidence adduced at the hearing nor resolve conflicts thereon. We will not disturb Carrier's decision where it is supported by substantive evidence and not arbitrary or capricious. Nor will we substitute our judgment for that of the Carrier unless

the record discloses prejudice or bias. See Awards 10572, 16074, 17914 and others.

Applying this policy to the record before us, we are compelled not to disturb Carrier's decision. The decision was reached after the testimony of two apparently disinterested witnesses. It is not alleged that these witnesses were prejudiced toward Claimant in any way. We are without authority to weigh their testimony against that of Claimant. That is not our function. Nor is there any indications that Carrier acted in an arbitrary manner. Under the rules enunciated by this Board, the decision of the Carrier is supported by substantive evidence and will not be disturbed by us.

Nor may Petitioner properly complain of the Carrier's review of Claimant's record in assessing the discipline to be imposed. It is well established by this Board that in affixing the degree of discipline, Carrier is privileged to take into consideration the employee's prior service record. This it did, and the resulting discipline was not excessive.

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 Employee involved in this dispute are respectively Carrier and Employee 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 evidence is sufficient to sustain disciplinary action.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1971.