

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19486
Docket Number DC-19680

Alfred H. Brent, Referee

(Joint Council of Dining Car Employees
(Local 495

PARTIES TO DISPUTE: (

(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the Joint Council of Dining Car Employees, Local 495 on the property of the Seaboard Coast Line Railroad Company for and on behalf of Mr. Oscar Taylor, who was dismissed from Carrier's service on February 1, 1971 as a result of an investigation held on January 12, 1971. Carrier shall now restore Mr. Taylor to service with full seniority rights and compensated for all time lost.

OPINION OF BOARD: The claimant was employed as a Passenger Agent at the time he was accused by the civil authorities of accepting a bribe. He was transferred by the Carrier to the Dining Car Department as a waiter, in accordance with his seniority. He worked in this capacity until he was convicted and sentenced to prison.

The records show that prior to the investigation held by the Carrier on January 17, 1971, the claimant was advised that he had violated that portion of the Dining Car Department Rule 70 relating to dishonesty and that he was an undesirable employee because he had been tried and convicted and on October 14, 1970 was sentenced in the Criminal Court of Record, Duval County, Florida, on a charge of accepting a bribe. As a result of the investigation the claimant was dismissed by the Carrier.

The Organization appealed to this Board on the grounds that the claimant occupied an excepted position of Passenger Agent and therefore was not subject to Rule 70 of the Dining Car Department; also, that the charge of being an "undesirable employee" is vague and ambiguous and is not a precise charge; and that no details were given to apprise the claimant of the date, time, or place in regard to the charge of violation of General Order No. 70 relating to dishonesty.

The Organization's contention that it was improper to hold an investigation while the claimant occupied an excepted position as Passenger Agent ignores the long-standing position of this Board that an employee may be removed from an excepted position without resort to the disciplinary and appeals procedure of the Agreement, but when such an employee is to be dismissed from the service of the Carrier then the provisions of the Agreement under which he holds seniority must be followed. (See Awards 17922 (Devine), 13632 (O'Gallagher), 8426 (Lynch), 6868 (Parker), 6250 (Elkouri), 2941 (Carter)).

While it is true that the claimant was indicted while he was a Passenger Agent, at the time of his conviction he was, in fact, working as an employee of the Dining Car Department, where he held seniority and was therefore subject to the provisions of Rule 70.

This Board has taken the position that Carriers are not required to retain employees who are dishonest or bring discredit to the Carrier in their service. The Board has also held that where the claimant was afforded a fair and impartial hearing and the action of the investigation was neither arbitrary, capricious, or in bad faith, the action of the carrier should not be disturbed.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.