

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22558
Docket Number CL-22623

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8626) that:

(1) Carrier violated the Agreement between the parties and continues to violate the Agreement when it dismissed Mr. J. L. Clayton from the employ of the Southern Railway Company unjustly.

(2) Carrier shall now be required to restore Mr. Clayton to service with full seniority rights unimpaired, including vacation rights, and compensate him for all salary loss sustained retroactive to March 7, 1977 and continuing to include all subsequent increases due him by negotiations between the Brotherhood and the Southern Railway Company.

OPINION OF BOARD: Claimant was a dining car waiter on Carrier's Train No. 1, the Crescent, operating between Washington, D. C. and New Orleans, La. He had been in Carrier's service about three and one-half years.

On February 7, 1977, he was notified by the Manager, Dining and Sleeping Cars:

"Please arrange to attend a hearing to be conducted in the office of Division Superintendent W. H. Westerman, 99 Spring Street, Atlanta, Georgia at 2:00 P.M., Friday, February 11, 1977.

You will be charged in the hearing with insubordination in that you refused to comply with instructions from Steward C. E. Smith, to properly man your station as waiter No. 2, Train No. 1, on January 10, 1977.

"It is alledged that you accepted an order from a passenger located at station No. 3 to which you were not assigned and when instructed by Steward Smith to man your assigned station No. 2 and serve a waiting passenger and allow waiter No. 3 to complete service to a passenger at station No. 3, you became argumentative, refused to comply with the steward's instructions and advised him not to tell you what to do, after which you continued service to station No. 3 in defiance of the steward's instructions.

Additionally, you will be charged with failure to perform your duties as waiter No. 2 and sleeping on duty. This incident occurring during the breakfast meal on Train No. 1 the following morning, January 11, 1977.

The above constituting violation of Section I, Articles 5 A and B, Page 7, and Section III, Articles 2 A, B, and C, Page 13, of the company Manual of Instructions and Procedures, Dining and Tavern Car Section.

You may arrange to have with you at the hearing any witnesses and/or representatives you desire in accordance with your agreement."

At the request of the Organization, the investigation was postponed to February 18, 1977.

Section 1, Articles 5 A and 5 B, and Section III, Articles 2 A, 2 B, and 2 C of the Manual of Instructions and Procedures, Dining and Tavern Car Section, as referred to in the letter of charge, reads:

"SECTION I - GENERAL

5. Conduct

- A. Employees should conduct themselves in a courteous, orderly and quiet manner at all times.
- B. Uncivil, offensive or unjustifiable behavior jeopardizing the business interest of the Company is a breach of the employer-employee relationship and just cause for discipline."

"SECTION III - DUTIES OF THE CREW"

2. Stewards

- A. Stewards are directly responsible for the entire operation of the dining car, including maintaining supplies and equipment, maintaining order and cleanliness, serving guests, collecting and handling funds, etc.
 - (1) In carrying out these duties, stewards should follow guidelines for maintaining supplies and equipment, maintaining order and cleanliness, serving guests, collecting and handling funds, etc., set forth elsewhere in this manual.
- B. Stewards have direct supervision over dining cars to which they are assigned and are held responsible for the actions and performance of the entire crew.
 - (1) Stewards will also have general charge of tavern car if one is attached to train.
- C. The authority of the steward as set forth in this manual must be respected by all members of the crew."

The investigation was conducted on February 18, 1977, the date agreed upon. Claimant was present throughout the investigation, and was represented by the Local Chairman of the Organization. A transcript of the investigation has been made a part of the record. We have carefully reviewed the entire record, including the transcript of the investigation, and find that none of claimant's substantive procedural rights was violated. Claimant received a fair and impartial hearing.

In dining car operations, the Steward is in charge of the car and the crew. The transcript of the investigation shows that claimant was insubordinate to and argumentative with the Steward. The Steward testified that claimant told him "...not to tell him what to do," and that claimant "seemed angry and belligerent."

There was substantial evidence in support of the charge against the claimant. The record also shows that between August 21, 1976, and September 20, 1976, claimant was suspended for thirty days for refusing

to perform duties assigned to him. Apparently the prior discipline did not have the desired effect.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.