

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23138
Docket Number CL-23282

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
(CL-9001) that:

1. The Carrier acted in an arbitrary, capricious and discriminatory manner and in violation of the current agreement when it discharged Mr. A. G. Evans on September 25, 1978.

2. The Carrier shall now be required to reinstate Mr. Evans with all rights unimpaired and pay him for all time lost by him.

OPINION OF BOARD: Claimant was formerly employed by the Carrier as 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 four years.

On August 31, 1978, claimant was notified:

"Please arrange to attend a hearing to be conducted in the Division Superintendent's Office building, 400 South Elm St., Greensboro, NC, second floor conference room at 1:00 P.M., September 7, 1978.

"You will be charged in the hearing with conduct unbecoming an employee, failure to comply with letter of instructions to all Dining and Tavern car employees, as outlined on pages 3 and 4 of the Manual of Instructions and Procedures, Dining and Tavern Car section, and violation of Section 1, Articles 5-A and B of the above manual. The purpose of the hearing is that it is alleged that at approximately 10:30 p.m., August 24, 1978, in the vicinity of Alexandria, Va., while serving as waiter, Train #1, you were in the process of cleaning a table at which passengers were dining and debris from your tray fell into the plate of passenger James W. Muhammad. After which an argument occurred and you allegedly shoved passenger Muhammed from a standing position backward to his chair, resulting in his clothing being soiled by food on the table.

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

The investigation, or hearing, was conducted as scheduled, and a copy of the transcript has been made a part of the record. We have carefully reviewed the transcript of the hearing and find that none of claimant's substantive procedural rights was violated. In the investigation, claimant admitted familiarity with the rules cited in the notice of charge. While a number of objections were raised by claimant's representative throughout the hearing, we do not find them to be of sufficient significance to invalidate the proceedings. One of the objections concerned the introduction of written statements into the record without the writers thereof being present. Such procedure has been upheld by this Board in numerous awards.

Based upon careful review of the entire record, we find substantial evidence to support the Carrier's actions in dismissing claimant from the service. While there were conflicts in the testimony presented at the hearing, it is not the function of this Board to weigh the evidence, attempt to resolve conflicts therein, or to pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.