

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24960
Docket Number MS-24366

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Thomas E. Walsh, Sr.
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(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on 30 days from date of this notice covering an unadjusted dispute between me and the Amtrak involving the question:

The original decision terminating me dated November 12, 1980, and issued after an investigation by W. E. Forkin, hearing officer, and the decision denying my appeal by J. W. Hammers, Jr., Corporate Director - Labor Relations, Amtrak, dated June 18, 1981, are against the weight of the evidence, or in any event unduly harsh given my long years of service, upon which passengers have favorably commended me. The specific issues in this case are:

1. I did not deliberately refuse service to passengers requesting food items on the menu;
2. I did not improperly complete my 896 form prior to arriving at Boston;
3. I did not complete my liquor kit forms or deny sale of liquor improperly at New London;
4. I did not force the passengers to walk through eight cars to the rear for food and service."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier subsequent to a formal investigation. Claimant's attorneys contend that the Claimant was not afforded a fair and impartial hearing and that the evidence did not support the charges as preferred by the Carrier. Claimant began his service for the Carrier on April 15, 1974, and was dismissed from the Carrier's service on November 12, 1980. Claimant was charged with:

- *1. Refused service to passengers requesting food items on your menu.
2. Had improperly completed your 896 Form by New London, C.T., two and one-half hrs. prior to arrival at Boston, totalling sales and revenue for items that were still available for sale.
3. Had completed your Liquor Kit forms and denied sale of such item at New London, C.T., two and one-half hrs. prior to arrival at Boston.

4. For holding a bottle of opened Lowenbrau beer and glass containing the beer in the icewell of the Am Cafe.
5. Forced passengers to walk through eight cars to the rear Am Cafe for food and beverage service, when items were still available in their car."

Specifically, Claimant was charged with violation of Rules I, K, and L of the AMTRAK Rules of Conduct and Rule 8 of the Rules and Instructions Governing On Board Service Employees.

Briefly stated, the record indicates that the Claimant, a Lead Service Attendant, working in the head car, had requested the train conductor to announce over the public address system that the head car was closed and that anyone wishing food or beverage service should proceed to the rear car. The record further indicates that the Claimant had requested this announcement because he had experienced problems of unruly and boisterous conduct in the head car. In New London, Connecticut, the Carrier's assistant regional director of passenger services boarded the train and found that the Am Cafe in the head car was closed and that passengers were going to the rear of the train for service. Upon meeting the Claimant in the head car, the Carrier's representative questioned the Claimant as to why service had stopped in the head car when supplies were amply and readily available. Upon discussing the situation with the Claimant, as well as with the train conductor, the Carrier's assistant regional director removed the Claimant from service for refusing to sell food and beverage items still available for sale, for Claimant's informing the conductor that he was out of food and beverage items when there still was a number of such items available for sale, for causing the Carrier a loss of goodwill as a result of the Claimant's conduct. The Carrier's representative had also observed an opened bottle of beer in the icewell at the Claimant's service area (which Claimant indicated such bottle belonging to a passenger who would be returning shortly).

The Claimant attended his investigation on November 3, 1980, in the company of his union representative. This appeal has been filed by the Claimant's personal attorneys, who were also present and at the Referee Hearing, and who forcefully argued the Claimant's case before the Board.

We cannot agree with the contentions of the Claimant. It is a long-standing precedent of this Division, and other Divisions of this Board, that we will not substitute our judgment for that of the hearing officer absent evidence of arbitrary, capricious or discriminatory behavior or an abuse of managerial discretion. Our thorough review of the record does not support the allegations of the Claimant.

It is also long-standing policy and precedent of this Board not to substitute its judgment for that of the hearing officer and Carrier. Again, our review of the record indicates that the evidence as adduced at the formal investigation supports the findings and conclusions of the hearing officer. This Board was not present at the formal investigation. We were not able to observe the presentation of evidence as was the hearing officer. We were not able to ascertain the demeanor of witnesses as was the hearing officer. Clearly, this Board is not a trier-of-fact. That is the duty of the hearing officer. Our review of the record does not find evidence of the type described above which would warrant our sustaining of the instant claim and contentions as presented to this Board in the Claimant's submission.

Therefore, we find no basis on which to sustain the claim as presented.

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 Employes involvd 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.