

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

NEW YORK CENTRAL RAILROAD (LINE WEST)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees Union, Local 351 on the Property of New York Central System (Line West) for and on behalf of Homer Lee Hooker, waiter, to be returned to service with seniority rights accumulated and unbroken and with compensation for net wage loss suffered as result of unjust and unwarranted discharge in violation of Current Agreement, particularly Rule 6. (a) thereof, and in abuse of Carrier's discretion.

OPINION OF BOARD: Claimant is a dining car waiter. On July 2, 1948, he was discharged from the service of the Carrier for mishandling coach basket sales for the purpose of defrauding the Carrier. The Organization contends that claimant was not afforded a fair and impartial trial and that the dismissal from the service was based on incompetent and non-credible evidence.

This carrier maintains sandwich and beverage service in its day coaches for the benefit of passengers who do not patronize the dining car. On June 16, 1948, Claimant was assigned to Train 46, Chicago to Boston. While the train was in the Root Street Yards in Chicago, the steward discovered that two boxes of paper cups used in serving hot beverages were missing. Waiters were interrogated and the car was searched to no avail. The steward suspected that the disappearance of the cups was a part of a scheme to defraud the Carrier. As a precaution against such a scheme, he secretly marked the remaining hot cups to be used on the trip and informed the Dining Car Inspector at the La Salle Street Station of the situation.

Claimant was assigned to handle the coach basket service on the trip, it being work usually assigned to him. The steward checked out 56 marked cups to Claimant for use in serving hot coffee and the chef checked out sandwiches and other supplies to him. It was the custom on this road to check out the hot cups for coffee, charge the waiter ten cents for each cup and credit him with each cup returned and not used. Under this method of handling, the coffee itself was not measured out to the waiter.

The record shows that the Claimant made two trips into the coaches in the performance of this work. The steward checked the used cups in the coaches a couple of times and found that the marked cups were being used. When the Claimant checked in his supplies to the steward he returned 32 hot cups for credit none of which were marked cups, indicating that Claimant had collected for the coffee sold in the marked cups and settled with the Carrier by returning cups for credit which had not been issued to him.

We think the evidence was sufficient, if believed, to sustain the finding made by the Carrier. The story told by the witnesses called by the Carrier

fits into the circumstances existing at the time. That three boxes of hot cups were placed on the diner is amply corroborated. That two boxes containing 50 cups each were missing is conceded by all the personnel working on the car. The steward told the Dining Car Inspector of his plan to secretly mark the cups on hand before the train left Chicago. On arrival in Toledo, a representative of the Dining Car Department boarded the train and verifies that the 32 returned cups were unmarked cups. There is evidence that Claimant drew out enough coffee for 50 or 60 cups. The Carrier's hearing officer heard the witnesses testify. He had an opportunity to observe the conduct and demeanor of the witnesses, their candor and fairness, or want of it, and the reasonableness of the stories told by each under the circumstances revealed by the evidence. It is true that there are conflicts in the evidence which had to be resolved. We have many times said that under such circumstances it is not the function of this Board to weigh the evidence, for if the evidence is substantial and tends to support the charge made, the findings of the Carrier on the evidence even though it is in conflict, will not be disturbed. The evidence is ample in the case before us to sustain the findings of the Carrier. We cannot say, therefore, that the action of the Carrier was unreasonable or arbitrary, or founded on incompetent or incredible evidence.

The Organization contends that the trial was not fairly and impartially conducted for the reason that Carrier's trial officer interrogated some of the witnesses. There is no merit in this objection. It must be borne in mind that the conduct of a hearing in a disciplinary proceeding does not require an adherence to all the attributes of a trial of a criminal proceeding in the courts. Prior to the advent of collective agreements, management could hire and fire, or otherwise discipline employees, without reason and without cause. This prerogative has been limited by contract and it is the enforcement of these limiting contractual provisions with which we are here concerned. In other words, the Carrier must show that it acted upon evidence that warranted the application of discipline or, stated inversely, it must show that it did not act unreasonably or arbitrarily. The Carrier's trial officer represents it in making this determination. It is not a case of the trial officer being both prosecutor and judge, it is a matter of contract compliance in which the trial officer interprets the Agreement in the light of the evidence in the first instance. We find nothing in the conduct of the trial officer in the case before us to warrant the charge made. In fact, Claimant's representative acknowledged that the hearing had been held in accordance with the Agreement.

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 employe 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of April, 1950.