

Award No. 907

Docket No. 786

2-ACL-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement and Rule 21 thereof, Car Oiler and Packer Houston Ballard—

- (a) Did not have a fair hearing
- (b) Was unjustifiably suspended for fifteen days
- (c) Is entitled to be compensated for the wage lost in the amount of Seventy-two (\$72.00) Dollars, to cover fifteen (15) days actual suspension.

EMPLOYEES' STATEMENT OF FACTS: Houston Ballard was first employed as car repairer helper in the Atlantic Coast Line car department, Montgomery, Alabama, January 1, 1938. He was subsequently assigned as second shift car oiler and packer, working from 3 P.M. to 11 P.M. Under date of August 25, 1941, he was notified to report to his foreman for investigation—see Exhibit A.

According to the records the two Seaboard Air Line cars in question were received in interchange from the Western Railroad of Alabama at 5:15 P. M., August 14, and were forwarded in Train 522, 8:35 A. M., August 15.

Ex Parte investigation was conducted August 26 by Mr. J. S. Tillis, car foreman, in the presence of Mr. N. E. Elliott, local chairman of the carmen. See Exhibit B. Local chairman was denied all opportunity to represent the defendant, as provided in Rule 21. See Exhibits C and D.

At the conclusion of the ex parte investigation Houston was held out of the service pending action of Mr. R. H. Duncan, general foreman, and Mr. James Grant, superintendent motive power, as indicated in Exhibit B.

Two days later Houston was restored to his regular assignment after further handling by the local chairman with the general foreman, Mr. R. H. Duncan. See Exhibit D.

Under date of September 8, 1941, Houston was advised that he had been assessed fifteen days' actual suspension to become effective September 10, 1941. See Exhibit E.

The discipline assessed was served over the protest of the local chairman.

For his negligence he was eventually suspended for a period of fifteen days beginning September 10, 1941.

From the foregoing it will be seen that we had a great deal of patience with this box packer. In fact, our car foreman at Montgomery was more than patient with him. Instead of trying to impose any discipline on this Negro when trouble first developed, he worried along with him trying to see if he could make a reliable box packer out of him. However, his patience and warnings did not seem to have very much effect and when the delay to Train 522 on account of the hot boxes on the two Seaboard Air Line cars on August 15 occurred, it was just necessary to apply some discipline in order to see if Ballard would pay more attention to his duties.

Carrier contends Houston Ballard was negligent in his duties and the discipline administered was merited and justifiable and that the agreement was not violated.

Therefore, respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The record discloses the procedure at the hearing given Houston Ballard was the same as the procedure at the hearing involved in Docket 825, Award 906. It follows that Houston Ballard was denied the fair hearing to which he was entitled under Rule 21, and without such hearing the discipline imposed cannot be sustained.

AWARD

Claim (a) Sustained.

Claim (b) Sustained.

Claim (c) Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.