

**Award No. 1221**

**Docket No. 1133**

**2-FEC-CM-'48**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (CARMEN)**

**FLORIDA EAST COAST RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Coach Cleaner Charlie Holmes was unjustly deprived of his service rights for a period of fourteen (14) days, effective February 24, 1946, and that accordingly the carrier be ordered to reimburse him for all time lost during that period.

**EMPLOYEES' STATEMENT OF FACTS:** Coach Cleaner Charlie Holmes was regularly employed by the carrier at Buena Vista shops, Miami, Florida, on the 7 A. M. to 3 P. M. shift and his seniority date as such is as of February 29, 1936.

Coach Cleaner Holmes was suspended from service effective at 7 A. M. February 24, 1946, without a hearing. However, he was summoned to appear at a hearing which was held on February 27, 1946 and a copy of that hearing transcript is submitted herewith, identified as Exhibit A.

Approximate number of coach cleaners employed at Buena Vista shops during this time was, first shift fifty-four (54), second shift fifty-one (51), third shift fifty-three (53), making a total of one hundred and fifty-eight (158).

The agreement effective November 19, 1935, with revisions and supplements effective as shown reprinted January, 1946, is controlling.

**POSITION OF EMPLOYEES:** It is respectfully submitted suspension of Charlie Holmes without first granting him an impartial investigation is contrary to the provisions of Rule 29, reading:

"No employee shall be disciplined without a fair hearing by a designated officer of the Railway. Suspension, in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses.

If it has been found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for wage loss, if any, resulting from said suspension or dismissal."

East Coast Railway Company, with the request that he kindly cooperate with us in expediting the preparation and submission of the Carrier's position on this case to your Honorable Board, as early as possible, prior to thirty (30) days from date hereof.

An oral hearing is not desired unless the Carrier should request a hearing, and in which event, we will appreciate adequate advance notice of such hearing.

Very truly yours,

Fred N. Aten,  
President.

CC: Mr. R. B. Hunt  
Mr. R. G. Smith  
Mr. Irvin Barney

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**POSITION OF CARRIER:** The right to a division of overtime, for which men are paid at one and one-half times the straight time rates, make obligatory, the duty to work overtime when it is necessary to do so.

It was necessary to clean this car so that the switch engine crew could take it to the Miami Station to fill out a train, and as the switch engine crew was waiting for the car, it was necessary to have it cleaned as quickly as possible.

None of the gang would volunteer to work overtime and finish the car, and it was necessary to order them to do so. All obeyed the order except Charlie Holmes, who refused to do so.

He was charged with insubordination, and was given a hearing as required by Rule 29 of the controlling agreement, which reads, in part:

"No employee shall be disciplined without a fair hearing by a designated officer of the Railway. Suspension, in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

Any man who refuses to do the work ordered to be done, is of no use to the railway, and he should follow his refusal with his resignation. If a man is allowed to refuse to do work, and continue to work, all control over the men is lost, and no work will be done.

Discipline in any organization is necessary, and is contemplated by the terms of our agreement.

It is for your Honorable Body to decide whether or not the discipline administered in this case was adequate, just or excessive.

It is our position that leniency was extended in the case on account of the former good record of the employee.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This employee was charged with insubordination for declining to work overtime with his crew. His refusal was for the reason that he had an important appointment for a time shortly after his regular shift generally went off duty.

It was later developed that the employe had a legitimate excuse for being away; however, he was held off duty for 10 days after the facts were brought out.

His representative had requested the car foreman to allow Holmes to go back to work after he had been off two days and this request was declined.

The evidence in this case did not warrant discipline by actual suspension from the service for 14 days.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.