

Award No. 1575

Docket No. 1507

2-IC-FO-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Laborer Hattie Black was unjustly suspended on July 19, 1951, and unjustly dismissed from the service on July 27, 1951.

2. That accordingly the carrier be ordered to reinstate the aforementioned laborer to service with seniority rights unimpaired.

JOINT STATEMENT OF FACTS: The Illinois Central maintains a yard near Stuyvesant Docks, New Orleans, Louisiana, for the purpose of repairing and cleaning cars which are used principally for fruit loading.

Hattie Black, hereinafter referred to as the claimant, was employed at this point as a laborer, for the past seven or eight years, prior to July 27, 1951. The duties of the claimant were to sweep, scrub and clean the interior of refrigerator cars preparatory to loading.

On July 19, 1951, the claimant was suspended and notified by letter to appear at the office of C. C. Thompson for a formal investigation at 2:00 P.M., July 23, 1951. Claimant being charged with committing a nuisance inside a refrigerator car as well as insubordination to her foreman at approximately 3:00 P.M., July 18, 1951.

The formal investigation was held as scheduled on July 23, 1951, and submitted herewith as Exhibit A is a copy of the hearing transcript.

Under date of July 27, 1951, a letter was directed to the claimant advising her that she was dismissed from the service, a copy of which submitted herewith and identified as Exhibit B.

The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the hearing transcript does not reflect that the claimant is guilty of the charges preferred against her by the carrier, which in pertinent part reads:

"for your concern in committing a nuisance and insubordination to your supervisory officer."

The transcript of the investigation clearly shows that the acts of insubordination were repeated and deliberate. Claimant refused to follow instructions of Mr. Matthews to go to the office to talk over the incident. She did not comply with a similar request from Assistant General Car Foreman L. R. Barron or Mr. Barron's subsequent request that she give her equipment to someone else to put away, as a matter of fact she replied in a discourteous manner, "Don't talk to me like I am a damn dog." Also, claimant refused to answer Mr. Barron, although he repeated the question three times.

From these facts and supporting testimony, carrier concludes that Hattie Black was insubordinate as charged. An employee breaches the obligation he owes to the carrier and subjects himself to discipline when he fails to acknowledge authority and refuses to cooperate by not obeying orders.

In conclusion, the carrier reiterates its position that Laborer Hattie Black was discharged for violation of company rules by committing a nuisance in a refrigerator car and being insubordinate to her supervisors. While any one of the acts of misconduct charged might, under other circumstances have warranted a less severe penalty, their cumulative effect and deliberate intent fully justifies the action taken. Because of the proven charges and as a result of a fair and impartial hearing, Hattie Black was properly discharged from the service of this carrier.

In view of all that is above related, the carrier requests the Division to find this request as being one without merit and to deny it accordingly.

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 employes 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.

At the carrier's yard near Stuyvesant Docks in New Orleans, Louisiana, Claimant Hattie Black had been employed for some seven years to sweep, scrub and clean the interiors of refrigerator cars, preparatory to their being loaded with perishable fruits and other products, when she was discharged (July 27, 1951) after formal investigation and hearing on a charge of having committed a nuisance inside a refrigerator car in which she was not then working, as well as on the further charge of failing to comply promptly and fully with orders given her by her superiors after commission of the alleged nuisance.

During the hearing the claimant denied having committed the nuisance and asserted that she had merely been adjusting her clothes. In respect to the insubordination charged, she contended that she had elected first to comply with carrier's rules in putting up her tools.

Numerous awards of this Board have established the principle that in discipline cases the Board will not substitute its judgment for that of the carrier, i.e., will not reverse or modify the carrier's discipline action, unless the employes and/or their representatives are able to produce substantial evidence of probative value that the carrier, in the exercise of its managerial prerogatives, has abused its discretion by proceeding in an unfair, arbitrary, or capricious manner. In considering these matters this Division analyzes the record in order to learn if the carrier's investigation has been conducted in a fair, impartial way and if the penalty imposed by the carrier has been compatible with the offense.

Our study of the record in the instant dispute leaves us of the opinion that the organization and the claimant failed to sustain their burden of proof. It does not appear that the carrier acted unfairly or otherwise abused its discretion during the hearings on the charge against Hattie Black. Nor, because of the prime importance of keeping refrigerator cars in a clean and sanitary condition, is it evident that discharge was too harsh a measure to be imposed for the employe's offense.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1952.