

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they suspended Carman Albert Miles, Jr. from service on August 18, 1975 and dismissed him on September 9, 1975.
2. That accordingly the Seaboard Coast Line Railroad be ordered to reinstate Carman Albert Miles, Jr. with seniority rights unimpaired, compensate him for all time lost as a result of his suspension and dismissal.

### 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.

parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed in August 1975 as Carman at Hialeah, Florida with assigned hours 4:00 pm to Midnight, rest days, Tuesdays and Wednesdays. He failed to report for work on August 17, 1975 and upon reporting was given an oral and written reprimand by the Assistant Master Mechanic. Following that meeting, Claimant was instructed by his Foreman to proceed to his work area and start on the shoeing track in the Coach Yard. From the record it is apparent that employees including Claimant, often ride bicycles in connection with their work in the yard. A dispute arose between Claimant and his Foreman regarding whether Claimant would walk or ride his bike to the work site.

The record does establish that Claimant disobeyed orders of the Foreman and later of the Assistant Master Mechanic and rode his bicycle. Thereafter, at 5:00 pm, Claimant was taken out of service and under date of August 19, 1975 he was notified to attend investigation into charges as follows:

"You are directed to attend investigation scheduled to be held in the Office of the Superintendent of Terminals, Hialeah, Florida, at 2:00 p.m., Wednesday, August 27, 1975, to develop facts and determine responsibility, if any, in connection with your violation of Rule No. 19 of the agreement between the Seaboard Coast Line Railroad Company and the Brotherhood Railway Carmen of America, that portion which reads, 'An employee detained from work on account of sickness or for any other good cause shall notify his Foreman as early as possible,' this violation having occurred on Sunday, August 17, 1975.

Also, your violation of that portion of Rule No. 12 of the Seaboard Coast Line Railroad Company, Rules and Regulations of the Mechanical Department, reading, 'Insubordination will subject the offender to summary dismissal,' this violation having occurred at approximately 4:30 p.m., Monday, August 18, 1975.

You may have representation if you desire in accordance with the agreement under which you are employed and you may arrange to have present any witnesses who have knowledge of this matter."

Following the hearing, Claimant was found guilty of insubordination and of being AWOL and he was dismissed from service.

We have reviewed the record with care and are persuaded that Claimant is culpable for his actions, but that the penalty is excessive. He had already received an oral reprimand and written citation for his absence on August 17, 1975. It seems evident that this charge was added to the insubordination only to give extra weight and justify a harsher penalty. We cannot and do not condone Claimant's apparent disregard of reasonable orders from his authorized supervisors. But we must hold that the ultimate punishment of outright dismissal is too severe in this case. Claimant shall be reinstated, but without pay and benefits.

A W A R D

Claim sustained in part as indicated in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1980.