

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 106, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Washington Terminal Company

Dispute: Claim of Employes:

1. That under the current agreement, Car Cleaner J. K. Forest was unjustly dealt with when he was taken out of service June 28, 1978, and as a result of an investigation was given a suspension of fifteen calendar days which was unjust, unfair, and capricious and in violation of rule 29 of the controlling agreement.
2. That the Washington Terminal Company be ordered to reimburse Mr. Forest for his net wage loss, and his record cleared, due to this unjust treatment by Carrier.

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.

The record is clear that the claimant (Mr. Forest) was guilty of loitering. He was standing with two other employes in a car to which he was not assigned. He should have returned to his proper duty station when told to by his supervisor, Ms. Williams. When Ms. Williams returned 10 minutes later with Mr. Best, and he (Mr. Best) ordered the claimant to go to his car, and he still didn't move, this was insubordination. However, Mr. Forest never back-talked, or in any manner was overtly insubordinate. The manner of the insubordination and the relatively brief loitering time, combined with Ms. Williams' fairly casual initial order to the claimant to return to his assigned car bear consideration. In light of this, and considering the claimant's clean record and normally good work, I find the penalty excessive and order the suspension reduced to 5 days.

A W A R D

Claim sustained to the extent indicated in the Findings.

Form 1
Page 2

Award No. 8400
Docket No. 8311
2-WI-CM-'80

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1980.