

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 Employees:

1. That under the current agreement Car Cleaner E. B. Ferguson 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 forty five 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. Ferguson for his net wage loss, and his record be 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.

Here the record show that the claimant (Mr. Ferguson) was standing talking to two other employees in a car other than the one he was assigned to clean. When told by his supervisor (Ms. Williams) to return to his assigned duty station, he did not move. When Ms. Williams and Assistant Foreman Best returned to the car some 10 minutes later, the claimant had still not left, and did not do so even when told by Mr. Best. Mr. Ferguson was guilty of both loitering and insubordination (Rule N). He was not, however, nasty, or in any strong, overt manner, insubordinate.

The manner of the insubordination, and the fairly brief loitering time, combined with the rather casual way that Ms. Williams had originally ordered him to his car, deserve consideration. The penalty is excessive, and we order suspension reduced to 35 days.

Award No. 8416  
Docket No. 8313  
2-WT-CM-'80

A W A R D

Claim sustained to the extent indicated in the 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 23rd day of July, 1980.