

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United  
( States and Canada  
(  
( 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 dismissed Mr. F. E. Leveutte from service on December 14, 1977.
2. That the Seaboard Coast Line Railroad Company be ordered to reinstate Mr. F. E. Leveutte with full seniority rights, pay him for all time lost, including any overtime he would have made, vacation credits, insurance benefits, and all other benefits accruing to his position.

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.

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

It is Carrier's position that Claimant was insubordinate on October 20, 1977, and the discipline administered in this case proper in view of behavior exhibited by Claimant.

Rule 1:

"The rules and regulations as well as general and special orders issued from time to time are designed to insure the proper care of the Company's property and the interest of the Company and its employees. Every employee is expected to yield a willing and cheerful obedience thereto. To enter or remain in the service is an assurance of willingness to obey the rules and to work diligently during shop hours. Spoiling or wasting of material will be considered sufficient cause for discipline."

Rule 12:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, willful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statement or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

Rule 26:

"Employees must not absent themselves from their duties without permission from the proper authority."

The Foreman told this man twice to perform the work and when it was obvious Claimant had decided he would not clean the car because he had previously cleaned it, then the Foreman told him if you don't want to do your job then you will have to go with me to the General Foreman's office.

Mr. Leveutte states, "I left across the track, yes, but I also went to look for my Local Chairman, which states that I am supposed to have him in any conference, hearing or so forth, etc., and I started to do this. But before I could find him I was approached again Mr. Harper."

And, in fact, under the circumstances he cannot be severely criticized for his action to seek out his Local Chairman.

The Carrier's right to take disciplinary action against the Claimant under such circumstances cannot be doubted. Since the determination of a disciplinary penalty imposed upon an employee who has been found guilty of a wrongdoing necessarily involved managerial discretion.

However, the penalty is excessive compared to the wrongdoing. The position of the employees is: Claimant and Coach Cleaner G. E. Hurst on October 20, 1977 were instructed to clean Amtrak Coach 2794. They proceeded to the Coach as instructed and started cleaning. Claimant took a broom and was sweeping when Foreman Keglro arrived at the car. Claimant asked his Foreman who had made the mess in the car as he (Claimant) had already cleaned it one time. Foreman Keglro informed Claimant the Electricians had made the mess while installing new light fixtures. Claimant made the remark the Electricians should have to clean up their own mess. Foreman Keglro informed Claimant if he did not want to do the work, to lay his broom down. Claimant laid his broom down.

When the Foreman stated, if you do not want to do this work lay down your broom, he in fact asked the Claimant to express his feelings, which the Claimant did. The fact is Claimant, as instructed, was sweeping Coach 2794 when Foreman Keglro arrived. Foreman Keglro was questioned by Assistant Superintendent T. P. King who conducted the investigation, as follows:

"Q. Did he refuse to clean the room?

A. Well, he was sweeping the room when I went in and I said if you don't want to do it and he said 'well, I don't want to do it'." (emphasis added)

Claimant's Foreman admits Claimant was performing his work when he arrived at the car. Further, he does not say Claimant refused to do the work. Foreman Keglор further admits that he instructed Claimant as follows:

"I told you, if you didn't want to do the work, put the broom down \*\*\*."

Claimant was performing the assigned work when Foreman Keglор came to the car. While his Foreman was there, Claimant, since he had already cleaned this same car once, asked who had made the mess and made the statement they should have to clear up after themselves. Foreman Keglор then told Claimant if he didn't want to do it, put the broom down. This is evidenced by the two quotes from Foreman Keglор's testimony. This is corroborated by testimony of Coach Cleaner Hurst who was a witness, when question by Mr. King as follows:

"Q. It has been stated in this investigation that you overheard the conversation concerning the troubled experience at approximately 1:15 p.m. Would you please tell us in your own words what transpired?

A. Well, when Mr. Keglор come told me to go over there an clean the pullman me and Leveutte went on over there and so Mr. Keglор come on down and told Leveutte get the broom and sweep that trash out, you know, and so me and him went on up there and Freddie went to sweep it up, he said 'Mr. Keglор who made this mess down here', he said 'Jack Alderman' he said, 'well, I don't like to do my work the second time'. So he said 'Freddie if you don't want to clean that up throw the broom down' and so Freddie laid the broom down.

Q. Did Mr. Keglор instruct Mr. Leveutte to clean the room?

A. Well, at first he did.

Q. Did Mr. Leveutte ever clean the room?

A. He started to sweep it out and so Mr. Keglор told him, he said 'now if you don't want to do it lay the broom down.' So Freddie laid the broom down." (Emphasis added)

Likewise, Mr. J. W. Henley, Sheet Metal Worker, stated, "As I came into the car I looked up between the rooms and he was saying that somebody had messed the room up and I think he said 'come back in' he had cleaned, the room had already been cleaned once and I think he said 'come back in clean the second time' because somebody had came in and messed the room up. About this time

"Bobby come in there and Leveutte asked Bob, Mr. Keglör, who messed the room up. And I don't remember Mr. Keglör telling him and they got into a little discussion, excited and Mr. Keglör said 'well, if you don't want to do the work put the broom down' and Leveutte did as he told him." (Emphasis added)

Misdemeanors have never carried life sentences. The Carrier has here imposed the sternest punishment within its power for a relatively minor offense. While the Board has sustained the Carrier's finding of insubordination, nevertheless the expletive was not accompanied by defiance of orders or any overt act which indicated an unwillingness to submit to a reasonable authority. There are degrees of insubordination. Here, we believe it was of a minor degree. There have been no previous disciplinary infractions in this employee's record. Considering the Claimant's record of satisfactory service, the Board is of the opinion that a one (1) year suspension was in order.

Therefore, the penalty imposed by the Carrier was excessive and reduce the penalty to one (1) year suspension.

Indeed, in this particular situation, confusion existed, communication was clouded on both sides by excitement. The Foreman lacked clarity of statement when he refused to acknowledge to the Claimant as to where he wanted the Claimant to go. The Claimant acted correctly by seeking the direction of his Local Chairman.

Lastly, if the Foreman had given Mr. Leveutte a direct order to clean a car, and not given him an option, then the Claimant would have been guilty of failing to perform his duties. Obviously, Mr. Leveutte was annoyed that the work he performed was his craft to be proud of for its quality. Here we see an annoyance on the part of an employee because of the lack of consideration shown by others and expressing his objection to this lack of consideration to the proper authority - his supervisor. It appears that an application of better human behavior communications would have eliminated the entire situation.

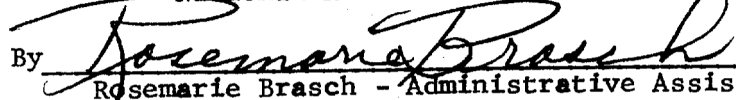
#### A W A R D

Seaboard Coast Line Railroad Company's punishment of Mr. F. E. Leveutte, in dismissing him from service was excessive, based upon the testimony and evidence as well as upon the case as a whole.

Therefore, the punishment is reduced to one (1) year's suspension, December 14, 1977 through December 14, 1978. Thereafter, Mr. F. E. Leveutte shall be reinstated with seniority rights unimpaired with pay for time lost from December 15, 1978 to the present, minus any outside earnings.

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 29th day of October, 1980.