

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated the controlling agreement when they unjustly assessed Car Cleaner L. K. Love a thirty (30) calendar day suspension as a result of an investigation held on August 22, 1978.
2. That accordingly the Washington Terminal Company be ordered to compensate Ms. L. K. Love her net wage loss plus pay she did not receive for August 1, 1978, due to this unjust and unwarranted suspension.

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, Ms. Love, was charged with failure to clean her assigned cars on August 1, 1978. She was further charged with being absent from duty without permission on the afternoon of the same day.

The record reveals that claimant was assigned by her supervisor to clean two cars in track 19. As it turned out, the two cars were in track number 12. However, this error in track assignment should have posed no problem. Claimant indicated her knowledge of the situation when she asked the following question of a witness:

"Mr. Anderson, doesn't train 420 normally sit in 19 track? Now some days it is in #12 and some days it is in 19 or 20. But the majority of the time when I get there for the afternoon assignment the two cars that I clean are usually sitting in #19."

It is obvious from the question that Ms. Love knew that the cars she was to clean sometimes were placed on track #12. When they were not found on 19 as

indicated it follows that she should have checked track 12 for her work assignment. Further, the supervisor indicated that another carman had reported that he told claimant that her cars were in track #12. The claim by the organization that the assignment was confusing simply lacks merit.

It is clear from the record that the cars were not cleaned. Based on the entire record and the statements of the claimant regarding her knowledge of the operation the defense that the assignment was confusing does not impress this Board. We find that claimant failed to complete her assignment as charged.

With respect to the second charge, the Carrier relies mainly on two factors. First, the work was not accomplished and secondly, the General Foreman testified that while driving to work at approximately 3:15 P.M. he observed Ms. Love some distance from the property standing on the street. This testimony indicated that he was approximately twelve feet from her as he passed in his car. His description of her apparel was concise. That testimony remained essentially unchallenged.

The organization relies on the statements of two witnesses to rebut the Carrier's contention. The first statements arose during cross examination of her supervisor. Claimant questioned the supervisor: "I think you looked for me about 3:15 and saw me at the back of #19 track and asked me were those cars clean on #19." The supervisor responded affirmatively. An attempt to verify the time proved futile. The supervisor further testified that she only knew that she saw Claimant after she came upstairs off track 82 and did not know that the cars were not cleaned at the time. Later she was informed at about 3:25 that the cars were not cleaned and efforts to locate Ms. Love were fruitless. The supervisor concedes only that she saw Claimant some time before it was determined that the cars were dirty. All efforts to locate Ms. Love after 3:25 failed. While there may be controversy with respect to a few minutes in time it appears that Claimant was absent from her work area for some time before the shift ended.

The second witness testified that he saw the Claimant on the property at approximately 3:45 P.M. It should be noted that the testimony placed Ms. Love at a considerable distance from the area of her work assignment. The credible testimony indicates that Claimant could not be found near her work assignment after approximately 3:25 P.M. This finding together with the testimony of the General Foreman gives credence to the Carrier's position. We find that the hearing was conducted in accordance with past practice and statutory provisions. There is sufficient evidence in the record to support the carrier's position.

Nor do we find, in view of Claimant's past record, that the penalty was excessive.

A W A R D

Claim denied.

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Award No. 8646
Docket No. 8451
2-WT-CM-'81

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 4th day of March, 1981.