

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8745
Docket No. 8806
2-BN-CM-'81

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

- 1) That the Burlington Northern, Inc. violated the terms of the current Agreement, in particular, Rule 35, when Coach Cleaner Fred Washington, Seattle, Washington, was improperly and unjustly suspended from service from October 19, 1978 to October 30, 1978, inclusive.
- 2) That accordingly, the Burlington Northern, Inc. be required to compensate Coach Cleaner Fred Washington for ten (10) days pay at the pro rata rate, restoration of all fringe benefits, and any other benefits that he would have earned during the ten (10) day period he was suspended from service.

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 employees 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.

On August 18, 1978, Claimant was served with notice to attend investigation "for the purpose of ascertaining the facts and determining your alleged responsibility in connection with failure to comply with instructions from proper authority and absenting yourself from duty without proper authority while assigned as Coach Cleaner, King Street Coach Yard, Seattle, Washington, at approximately 7:10 A.M., August 10, 1978."

As a result of such investigation, held after postponement at the request of Claimant's representative, Claimant was assessed ten days actual suspension for violation of Rules 665 and 667 of the Burlington Northern Safety Rule Book Form 15001. Such rules read as follows:

"665. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

"667. Employees must comply with instructions from the proper authority."

The investigation and ensuing disciplinary action are challenged by the Organization on several grounds which we now consider.

At the outset of the inquiry, Mr. Washington's representative asked two questions of the Investigating Officer: whether he had talked to any of the witnesses with reference to the charges, and whether he had received any documents relating to the matter under investigation. The conducting officer, General Foreman of Cars B. G. Johnson, declined to answer any questions. Petitioner urges that such declination demonstrated complete bias on the part of Mr. Johnson, making it impossible for Mr. Washington to receive a fair and impartial investigation. We reject such contention. Mr. Johnson properly declined to involve himself as a witness, and there is no showing that he had any prior knowledge of the matter which would disqualify him as the conducting officer.

The Committee also attacks Mr. Johnson's having three roles in the proceedings in that he (1) conducted the hearing, (2) reviewed the evidence to determine Claimant's culpability, and (3) assessed discipline. Our Award 8272 (Kasher, Referee) involved the same parties, the same multiple roles and the same governing rule. Such award rejected the Organization's challenge on the basis again urged herein. As in Award 8272, we find that the proceedings did not violate the Agreement or deny due process to the Claimant.

Petitioner further contends that we should set aside the discipline assessed because Carrier did not furnish a complete transcript of the investigative proceedings. This point is made because on several occasions the reporter indicated that a portion of Claimant's testimony was inaudible. We have carefully studied the record, however, and find absolutely no indication that significant evidence is lacking. Indeed, Petitioner makes no effort to show that such was the case.

Finally, the discipline is challenged on the basis that the record will not support the discipline assessed. Claimant's culpability depends on the testimony of Car Foreman W. R. Pomerville, whose testimony is contradicted by that of Claimant, but not otherwise. We have no reason to disturb Carrier's judgment as to the credibility of the two witnesses. Mr. Pomerville testified without equivocation that Claimant refused to clean the range on Amtrak Diner Car No. 8096. Mr. Pomerville's description of Claimant's refusal sounds credible:

"The words he said was, oh, now wait a minute, you can't give me that assignment just cause Eugene didn't come in. Then he said, bullshit, why do I always have to do Eugene's work. I'm tired of it, the hell with it, I ain't doing any."

Mr. Pomerville also refuted Claimant's contention that he told Pomerville that he was sick and couldn't work any longer and that the foreman told him he could go home if he wanted to.

On the whole, we find that the investigation was fairly and properly conducted and that the discipline was fully warranted.

A W A R D

Claim denied.

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 August, 1981.