

The Second Division consisted of the regular members and in addition Referee James R. Cox when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carman J. E. Rawls was suspended from service for thirty (30) days, April 6, 1981 thru May 5, 1981, at Hialeah, Florida.

2. That, accordingly, the Seaboard Coast Line Railroad Company be ordered to make Carman Rawls whole insofar as all benefits, including monetary benefits, vacation pay, insurance coverage and any other benefits that may have been accrued by him had this violation not occurred.

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 employes 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 March 1, 1981, Claimant J. E. Rawls was assigned by Foreman Austin to outside repair work on Train 98. Approximately 20 minutes thereafter, the Foreman observed him in the doorway of the kitchen inside a diner. Austin reminded him that he was to work outside. Claimant replied that he was working both inside and outside but gave no explanation as to why he was then inside the diner other than indicating that he had a window to take out. There were no windows to be replaced in the diner on the day in question nor were there any duties to be performed in the kitchen of the diner. When he was again instructed to work outside, he became angry and told the Foreman to punch him out, that he was going home. Not long afterwards, however, Claimant approached Austin in the office and asked for a torch. When reminded that he had said that he was going home, he asked for his timecard. He was told that the Foreman would sign him out. He left but returned shortly thereafter complaining, "I am not going to let you run me home."

The General Foreman thereafter called him into his office. Rawls refused to answer any questions and was relieved from duty. Following formal investigation, Claimant was suspended for 30 days.

Rawls conceded that he had been assigned to outside repairs on March 1, 1981 but asserted that he had gone inside the diner to sign off on the MAP form which is located in a locker at the steward end of the car. He denied that he was in the kitchen door area or that he told Austin he had to replace a window in that diner. He contended that he told Austin that a slack adjuster repair on the diner car was not on the MAP form. He stated that it was Austin who suggested that he go home.

Rawls alleged that Austin had been harassing him because of an incident that had occurred between the two men two or three years before. The details were not explained.

Rawls' suspension was for violation of Rules 4 and 12 of the Seaboard Coast Line Railroad Company, Rules and Regulations of the Mechanical Department.

Rule 4 reads, "Employees are required to devote their time exclusively to the business of the Company unless expressly exempted from so doing by proper authority". Rule 12 states, "...vicious or uncivil conduct...will subject the offender to summary dismissal".


The evidence indicates that Mr. Rawls, after the order to work outside, twice told Foreman Austin he was leaving the job and that he did not take any other position with the General Foreman. The evidence established that Rawls became angry at Austin without provocation and, in these circumstances, credible evidence did establish that Austin was threatened in the presence of another Employee, a violation of Rule 12.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985