

Award No. 1814

Docket No. 1702

2-KCT-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Coach Cleaners Robert Bates, James Earl and Charles Nevins were unjustly suspended for fifteen working days beginning September 24, 1952.

That accordingly the Carrier be ordered to compensate each of the aforesaid Coach Cleaners for all time lost as the result of said unjust suspension.

EMPLOYEES' STATEMENT OF FACTS: On September 24, 1952, Coach Cleaners Robert Bates, James Earl, and Charles Nevins, hereinafter referred to as the claimants, reported for duty on their regular assigned 4 P. M. to 12 Midnight shift and worked until 6:03 P. M. at which time each was instructed by Foreman J. L. Nusbaum that his time had stopped and to report to car department supervisor Mr. W. J. Dawson before returning to work.

On September 25, 1952, Local Chairman Herbert Chivers made formal request upon the car department supervisor for an investigation for these claimants in conformity with Rule 28 of the current agreement.

On October 2, 1952, each of these claimants was notified by car department Supervisor Dawson to appear for an investigation at his office at 1 P. M., October 7, 1952 in connection with charges of his services being unavailable between 5:15 P. M. and 6:03 P. M. September 24, 1952—Exhibits A—A-1—A-2.

Formal investigation was held as scheduled and a copy of the transcript is submitted herewith and identified as Exhibit-B.

On October 13, 1952, each of these claimants was notified by letter, copies of which are submitted herewith and identified as Exhibits C, C-1, and C-2, that he had been assessed a penalty of fifteen working days which would permit his returning to work on his regular assignment at 4 P. M. October 16, 1952.

The testimony of Head Inspector Murphy bears out the testimony of Cleaner Foreman Nusbaum.

After careful consideration of the evidence adduced in the investigation, Mr. McGuire, assistant superintendent, assessed 15 working days' penalty, as shown in Exhibit C, Pages 1, 2 and 3.

The letter of October 13, 1952, assessing discipline, stated that the three men would be returned to service on October 16, 1952, with seniority and vacation rights unimpaired, but with no payment for time lost. These men returned to service on their regular shift, 4:00 P. M. to 12:00 Midnight, under the terms of the letter, without protest.

Many awards of the Second and Third Division state that discipline is a requirement of management and as long as their actions were not arbitrary or capricious, and the rules were not circumvented, the Division will not intervene.

In summary: The investigation was held in accordance with the agreement rules. The investigation was carefully reviewed by an officer of the carrier and discipline rendered in accordance with the evidence brought out in the transcript. All three coach cleaners were not in their proper place to be available for assignment. The penalty assessed was 15 days suspension, which was not excessive. They were notified of their suspension and informed to return to their regular assignment on a given date with the understanding that their seniority and vacation rights would be unimpaired but they would not be compensated for time lost. The three men returned to service at the beginning of their regular shift October 16, 1952, which was indicative of their acceptance of the carrier's terms set out in the letter. No protest was ever inaugurated on any of these points. The only issue raised was on the proof of guilt brought out in the investigation. This stands on its own bottom. The three coach cleaners were not at the point designated in their bulletin. Therefore, they were not available for service. The supervision's testimony was not offset. It is the duty of management to assess discipline for infractions of rules. The penalty was not excessive and the action was not arbitrary or capricious, and the carrier requests that the Board so hold.

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.

The parties to said dispute were given due notice of hearing thereon.

On October 7, 1952, the three claimants were subjected to an investigation on charges that they were not available for service between 5:15 P. M. and 6:30 P. M., on September 24, 1952. Each was found guilty and suspended for 15 work days. Claimants contend they were unjustly suspended and claim compensation for the time lost.

Claimants are assigned as Car Cleaners at the Union Station in Kansas City, Missouri. Each was assigned 4:00 P. M. to 12:00 Midnight on the day in question and each had reported at the beginning of his assigned tour of duty.

The record shows that the three claimants were given written instructions by their foreman when they were assigned to their respective positions. Their main duties at the Union Station are to ice, water and service passen-

ger equipment and furnish boiler and radiator water for Diesel engines moving passenger trains through Kansas City. The servicing of special trains is included in their assignment in addition to scheduled trains specifically named therein. They are instructed to be in Head House Track 23 and 24 or in the dressing rooms at all times when not working trains in order that they may be available to service special trains. They were directed also in writing to report to the clerk in the office when taking a meal period. As stated in the formal charge made against them, it is the contention of the carrier that the claimants violated these written instructions in that they could not be found and were not available for service from 5:15 P. M. to 6:03 P. M. on September 24, 1952. It appears that a Banker's Special train arrived at 5:30 P. M. and the foreman desired their services to work it. It also appears that Missouri Pacific Train No. 211, scheduled to arrive at 6:15 P. M., arrived at 5:56 P. M. The foreman was unable to find them at their designated posts or at any other place where their work might take them.

Claimant Bates stated that fifteen minutes before the scheduled arrival of Missouri Pacific Train No. 211, he went to Track 18 where it usually is set to await its arrival. He then went to the west end to check the time of arrival and found that the train was already in and setting on Track 13. He went to the train, into the coach and out again to locate a broom. He then went to the dressing room and made use of toilet facilities at that point. He was told that the foreman wanted him and he reported at the office. The foreman checked him out and sent him to the Car Department Supervisor, W. J. Dawson. He states that he was gathering his equipment and using the toilet during the time he could not be located.

Claimant Earl says that he went to Track 18 at 5:45 P. M. to meet Missouri Pacific Train No. 211 where he found a Rock Island train. He learned that No. 211 was in and setting on Track 13. He started work and found it necessary to go to the locker room to get a dummy. From there he went to the office to get an ice pick. While at the latter place the foreman asked him where he had been and checked him out.

Claimant Nevins says that he had taken some medicine and had to go to a toilet. He says he went to the one at Harvey's because of its urgency. He started back, met and talked a few minutes with a fellow employe and returned to the toilet. When he came back he saw Bates and was told that the foreman was looking for him. He told the foreman he was up to Harvey's using the toilet and also getting a bowl of soup. He was thereupon checked out.

The foreman says he went to the gas house, Track 23 and 24, at 5:10 to assign Bates, Earl, Nevins and Bolin to work the Banker's Special due to arrive at 5:30 P. M. He found no one there except Bolin. He inquired of Car Cleaners Sargent, Bolin, Rucker and Crain as to where claimants were. None had seen them. He went to the east end, the Milk Dock Office, dressing room, Harvey's Restaurant, back through the station and various other places and was unable to find any one of claimants. He says that Train 211 came in at 5:55 P. M. and no one was there to work it except Bolin. He says claimants showed up at his office one at a time. The foreman states he made two trips trying to locate claimants without success. The statements of claimants are not corroborated except to the extent that they appeared for work about 6:00 P. M.

The evidence sustains a finding that these three claimants were not at the place where their instructions required them to be. The reasons which they advanced for being away from their assigned stations are not sufficient to excuse them. One claims he was gathering up his equipment. Since he had been on duty for more than an hour, it would seem that he should have had it a considerable time prior thereto. One says he went to the Harvey Restaurant to eat. He failed to report to the clerk in the office

before so doing as required by his written instructions. Two of them claim that it was necessary to use toilet facilities but it appears such facilities were available at the place where they were required to be. We are forced to the conclusion that claimants were away from their stations without justifiable excuse.

It appears probable from this record that claimants assumed that they would have no work to perform until the arrival of Train 211 at its scheduled time of 6:15 P. M. It arrived 19 minutes early and the Banker's Special came in without advance notice to them at 5:30 P. M. Such contingencies, however, are the reason why claimants are required to remain at their assigned station when not working passenger cars. Their failure to be where they can be reached could bring about delay to train service movements.

The operation of a railroad is complex. Many departments and crafts must perform responsible work to produce efficient railroad operation. Most employes accept their responsibilities, but when laxness and indifference manifest themselves, discipline must sometimes be imposed to secure the necessary personal service required. If this were not so, chaos and confusion would soon hinder efficient and safe operation. It is for these reasons that this Board would hesitate to interfere with the action of the carrier in cases such as we have before us. It is quite evident that these claimants improperly assumed that they would not be needed until Train 211 arrived at 6:15 P. M. The assumption was not justified with the result that carrier was forced to call on others to do their work. Carrier clearly had the right to enforce its instructions and compel obedience to its orders which were definite and positive. To hold otherwise would unduly restrict the right of management to efficiently operate its railroad. Claimants were given a hearing at which they had full opportunity to be heard and to produce witnesses. The action of the carrier appears to have been motivated by necessity and not by action that could be deemed arbitrary or capricious. We can find no reason for interfering with the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1954.