

Award No. 3620
Docket No. 3785-I
2-AT&SF-I-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—COAST LINES—

LENNIE ANDREWS—Coach Cleaner

DISPUTE: CLAIM OF CARRIER: Was Coach Cleaner Lennie Andrews of Barstow, California properly dismissed from service as result of formal investigation held on March 30, 1960?

CARRIER'S STATEMENT OF FACTS: Lennie Andrews was employed by this carrier as coach cleaner in its Barstow, California, Shops on August 1, 1946 and was so employed on March 28, 1960. His hours of assignment were 11:00 P. M. to 7:00 A. M. working five days per week with Saturday and Sunday off. On Monday, March 28, 1960, he reported for duty at his regular time—11:00 P. M.

It is the normal and routine duty of carrier's supervisors to check empty passenger equipment. On the night of March 28-29 carrier's special officer Ralph L. Dutro, accompanied on this occasion by Foreman D. Townson and Foreman C. H. Payne, entered Chair Car 3061 at approximately 12:55 A. M. March 29, 1960, and there found Coach Cleaner Lennie Andrews, the subject of this submission, sound asleep.

Coach cleaners on this property are represented by the Brotherhood Railway Carmen of America and the current agreement between this carrier and System Federation No. 97 Railway Employees' Department AFofL effective August 1, 1945 reprinted January 1, 1957, is on file with this Board. The discipline rule in this agreement reads as follows:

"DISCIPLINE

Rule 33½

(a) No employe will be disciplined without first being given an investigation which will be promptly held, unless such employe shall accept dismissal or other discipline in writing and waive formal investigation. Suspension in proper cases pending a hearing, which shall be promptly held, will not constitute a violation of this rule. An employe involved in a formal investigation may be represented thereat, if he so desires, by the Local Chairman and one member of the Shop Committee.

POSITION OF CARRIER: It is the carrier's position that the evidence educed in the investigation supports the conclusion that Lennie Andrews was properly removed from service for the following reasons:

1. That at 12:55 A. M. on March 29, 1960 Lennie Andrews was found by Special Officer R. L. Dutro, Night Trainyard Foreman C. H. Payne and D. Townson asleep in an unlighted, unoccupied chair car that was parked on the coach track spur and it was necessary for Special Officer Dutro to shine his flashlight in Lennie Andrews' eyes in order to awaken him.

This action on Lennie Andrews' part constituted a violation of Rules 20 and 22 of Form 2626 Standard, which have been quoted in this submission but are here repeated for the convenience of the Board:

"Rule 20: Employes must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not absent themselves from duty, exchange duties, or substitute other persons in their places without proper authority. They must report for duty as required and those subject to call for duty will be at their usual calling place or leave information as to where they may be located."

"Rule 22: Courteous deportment is required of all employes in their dealing with the public, their subordinates, and each other.

"Employes must not enter into altercations, play practical jokes, scuffle, or wrestle on company property.

"Employes must devote themselves exclusively to their duties during their tour of duty."

2. That Lennie Andrews admitted in the investigation that he was in Chair Car 3061, parked on the coach track spur, which is not located in the area where he was assigned to work.

3. That being found asleep in a chair car away from the point assigned to work Lennie Andrews did in fact hide out at a time when there was work for him to do; see testimony of Night Trainyard Foreman C. Payne and Lead Coach Cleaner Lewis Johnson.

4. His representative, Mr. Reynolds, has admitted that Lennie Andrews was guilty of violation of Rules 20 and 22 of Form 2626 Standard, as charged; see page 11 of transcript.

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 were given due notice of hearing thereon.

The respondent, Lennie Andrews, in answer to the carrier's ex parte notice of August 1, 1960, advised the Second Division by wire August 31, 1960 that

“I do not wish to procede before your Board. My case is now before the California Fair Employment Practices Commission. I wish it to remain with this commission.”

The carrier appeared at the hearing held before the Second Division on November 30, 1960 but the respondent failed to respond to notice of said hearing or appear at the hearing; therefore the assertions of record of the carrier stand uncontroverted and the Division can find no basis for reversing the carrier's position that Lennie Andrews, Coach Cleaner at Barstow, California, was properly removed from service as a result of formal investigation held at Barstow, California, on March 30, 1960.

AWARD

Position of carrier sustained in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December, 1960.