

Award No. 4298

Docket No. 4137

2-FEC-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier unjustly and improperly removed Coach Cleaner America N. Banks from its service as a Coach Cleaner at Buena Vista, Florida on April 14, 1961.

2. That accordingly, the Carrier be ordered to restore the afore-said employe to service and compensate her for all wage loss resulting from said unjust action.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner America N. Banks, hereinafter referred to as the claimant, was employed by the Florida East Coast Railway Company, hereinafter referred to as the carrier, on December 4, 1943 as a Coach Cleaner and assigned to cleaning the inside of passenger cars. Claimant continued on said assignment for approximately 17 years or until the latter part of December 1960 at which time carrier arbitrarily removed her from her assignment of cleaning the inside of passenger cars and assigned her to cleaning and scrubbing the outside of passenger cars.

At the same time December 1960, employees junior to claimant were assigned to inside cleaning work.

Claimant performed her assignment of cleaning and scrubbing the outside of passenger cars for approximately 4 months or through April 14, 1961.

Under date of April 13, 1961 Carriers General Car Foreman J. E. Smith addressed the following letter to Claimant:

"Buena Vista, Florida
April 13th, 1961.

PR

14(e) of her working agreement, from the position which she then held, retaining her seniority and enjoying the right under said Rule 14(e) to take whatever position might be open and for which she could qualify. Certainly such action on the part of the carrier cannot be construed as disciplinary action since she was not barred from service as car cleaner, the railway's assertion in this regard being fully supported by the fact that she was recalled to service on December 16, 1961, when forces were increased for the 1961-1962 winter-spring season, and performed service on a position on which she was able to qualify until forces were again reduced effective January 1, 1962, and her seniority was not sufficient to enable her to continue to hold a position.

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 Claimant, America N. Banks, was employed by the Carrier on December 4, 1943, as a Coach Cleaner.

On April 13, 1961, the Claimant, who was then engaged in cleaning and scrubbing the outside of passenger cars at Carrier's facility at Buena Vista, Florida received the following notice:

"America N. Banks,
Car Cleaner
Buena Vista,

"Buena Vista, Florida
"April 13th, 1961
PR

"Since you have failed to qualify on position of Car Cleaner in that you have not fulfilled the duties required of your Car Cleaning assignment, you are relieved therefrom effective at the end of your tour of duty April 14th, 1961 as prescribed by Rule 14(e).

"Yours truly,

/s/ J. E. Smith
"General Car Foreman

"1—rd
"CS: W. A. Baker
J. G. Smith"

Between April 14th and April 25, 1961—when the positions of all fifty-three Car Cleaners were abolished—the claimant lost a total of seven days' work.

The Organization contends that:

1. "The Carrier has steadfastly refused to grant Claimant a hearing or to reinstate her to the service;"
2. "There are employees junior to Claimant (sic) working at the present time who have worked continuously since her removal from the service;"
3. Bulletined Coach Cleaners' positions "do not identify the work to be performed";
4. Successful applicants for bulletined positions are "arbitrarily assigned by the Foreman in charge to perform work of the class that suits the foremans (sic) fancy without regard to the wishes or seniority of the applicant";
5. The "Claimant did not exercise her seniority under rule 14 to the position or job of cleaning and scrubbing the outside of cars";
6. The Carrier arbitrarily removed the Claimant "from her assignment of cleaning the inside of passenger cars and assigned her to cleaning and scrubbing the outside of passenger cars";
7. The Carrier's action "constitutes a violation of Rule 29(b)";

The Carrier, on the other hand, contends that:

1. The Organization's loss of earnings claim is invalid;
2. The Claimant "was assigned duties which on certain dates entailed scrubbing the outside of passenger cars" which were in keeping with her seniority;
3. The Claimant failed "to thoroughly remove the dirt, notwithstanding repeated admonishments from supervisory personnel that she was not qualifying for the position";
4. The Claimant "was neither suspended nor dismissed from the Railway's service, but justifiably disqualified from her car cleaning assignment under the provisions of Shop Craft Rule 14(e) for not fulfilling the requirements of her position";
5. The Claimant "made no attempt to place herself on another position for which she might have been qualified";
6. "Rule 29, the Discipline Hearing Rule, has no application in the instant dispute for the reason that disciplinary action was neither taken nor involved."

An objective and critical analysis of the record before us makes it abundantly clear that this case should have been settled on the property.

An elementary familiarity with recognized, accepted and effective supervisory practices on the part of Organization and Carrier Representatives on the property would have satisfactorily settled this case at its proper level.

No one should deny that an employee with seventeen years of loyal and satisfactory service—prior to the present incident—is deserving of consideration, especially when such consideration was not only within the control and

authority of Carrier and Organization Representatives, but also was not violative of any rule of the controlling Agreement.

When it was learned that the Claimant was unable to fulfill "the requirements of her position" as outside Coach Cleaner, Organization and Carrier Representatives should have arranged, with the approval of certain senior Coach Cleaners, to assign the Claimant to inside coach cleaning work. This, we are quite sure, would have disposed of the grievance with mutuality and dispatch.

Inasmuch as the monetary claim was not part of the initial claim but was introduced as the claim progressed on the property—we consider that portion of the claim invalid.

Accordingly, we sustain Part 1 of the claim and deny the monetary portion of Part 2.

AWARD

Claim disposed of 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 27th day of September, 1963.