

Award No. 4299
Docket No. 4138
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 Bertha J. Hudson from its service as a Coach Cleaner at Buena Vista, Florida on March 31, 1961.
2. That accordingly, the Carrier be ordered to restore the afore-said employe to service in accordance with her seniority and compensate her for all wage loss resulting from said unjust action.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Bertha J. Hudson, hereinafter referred to as the claimant, was employed by the Florida East Coast Railway Company, hereinafter referred to as the carrier, on May 5, 1945 as a coach cleaner and assigned to cleaning the inside of passenger cars. Claimant continued on said assignment for approximately 15 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, employes junior to claimant were assigned to inside cleaning work.

Claimant performed her assignment of cleaning and scrubbing the outside of passenger cars for approximately one month or through January 13, 1961, at which time carrier removed her from service. After due handling by the organization, claimant was reinstated to service February 4, 1961 and paid for all time lost.

Under date of March 28, 1961 carrier's General Car Foreman, J. E. Smith addressed the following letter to claimant:

Blacksmith Helper W. J. Elmore disqualified on November 8, 1945, from position of blacksmith helper to which he was assigned by Bulletin No. 134-A dated October 19, 1945, account this individual being too light in stature to use the heavy blacksmith hammer.

Machinist Helper Everett Marion disqualified on October 29, 1958, account not being able to perform heavy work connected with handling of wheels in the wheel shop.

Machinist Helper J. T. Farmer disqualified January 25, 1961, account unable to perform the duties of the position to which assigned.

3. Also in local handling the employes advanced the contention that the railway had disqualified the claimant for no reason other than that the railway did not want women on the car cleaner positions. Such an accusation was entirely unfounded and consisted of nothing more than an ill-fated effort on the part of the employes to "color" this case in their favor and distort the true basis for disqualification of the claimant, a basis which has fully been established as proper under Rule 14(e) by the facts as developed in Items Nos. 1 and 2 hereinabove.

4. In resume, because the force of passenger train car cleaners was reduced in the 1960-61 winter-spring season below that of previous seasons due to a marked decline in passengers traveling over the railway with fewer passenger cars in service, the claimant's seniority did not entitle her to work on an inside cleaning position as it had in former years. Being junior in seniority she was assigned to washing and rinsing the outside of the cars, work which is considerably more strenuous than the cleaning of the inside of passenger cars as the claimant had done in prior years. Her work in washing and rinsing the exteriors of the cars was far from satisfactory and even though she was repeatedly admonished and encouraged to improve her performance, she was apparently unable to satisfactorily perform the washing and rinsing of the cars for she never brought her work up to an acceptable standard. After a thirty-two (32) day trial period following her return to service on February 4, 1961, during which the claimant was given every opportunity to demonstrate her ability to do the work, it became apparent that any further trial would not show an improvement or result in a satisfactory performance on the job and she was, therefore, disqualified under the provisions of Rule 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 for which she was able to qualify.

For the reasons stated herein the complaint is without merit and should be denied.

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, Bertha J. Hudson, was hired on May 5, 1945 as a Coach Cleaner at Carrier's facility at Buena Vista, Florida.

On December, 16, 1960, the Carrier assigned the Claimant, who had been on furlough, to cleaning the outside of passenger cars.

On January 13, 1961 the Carrier disqualified the Claimant for that position on the grounds "her work was not satisfactory". However, at the Organization's request the Claimant was "reinstated" effective February 4, 1961; compensated for the seventeen work days she lost during the disqualification period; and given another opportunity to demonstrate whether or not she could satisfactorily perform the duties of her position.

On March 31, 1961, the Claimant was again disqualified from her assignment.

The Organization contends that:

1. The Carrier declared Claimant incompetent to perform work assigned;
2. The Claimant was unjustly and improperly removed from service;
3. The Carrier's action constituted a violation of Rule 29(b).

The Carrier, on the other hand, contends that:

1. The claim is invalid because the Organization amended its claim, in the latter stages, to include compensation for Claimant's loss of earnings;
2. The Claimant's seniority did not entitle her to work as an inside Coach Cleaner;
3. The claim is without merit because the Claimant was not disciplined but disqualified from her assigned position.

This case is linked with Award 4298 and the findings set forth in that Award are also controlling in this case.

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.