



Award No. 5915

Docket No. 5740

2-WT-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 106,
RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO
(CARMEN)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- 1- That under the current agreement, Car Repairman, J. A. Miller, was unjustly suspended from the service for a period of five (5) days commencing March 2, 1968.
- 2- That accordingly, J. A. Miller, is entitled to be compensated for all wage loss that resulted from his unjust suspension from the service.

EMPLOYEES STATEMENT OF FACTS: Car Repairman, J. A. Miller, hereinafter referred to as the claimant was employed on the 8:00 A.M. to 4:00 P.M. shift, coach yard, Washington Terminal Company, hereinafter referred to as the carrier. On February 5, 1968 the claimant was notified by carrier's master mechanic to report at Room 220 Union Station at 10:00 A.M. Tuesday, February 13, 1968, for a hearing on the charge;

"Leaving your assignment without permission before completion of your tour of duty and falsifying your time card on January 16th 1968."

Hearing was held on schedule. On February 20, 1968 the claimant received notice from carrier's master mechanic that he had been found guilty as charged and that he was thereby suspended for a period of five working days commencing Saturday, March 2, 1968. Claimant's case was appealed and has been handled in accordance with the collective controlling agreement effective June 16, 1946 up to and including the highest designated officer of the carrier to whom such matters are subject to appeal, with the result that said officer on more than one occasion has declined to adjust this dispute.

The agreement of June 16, 1946 as subsequently amended is controlling.

POSITION OF EMPLOYEES: The employees submit that the five (5) days suspension assessed the claimant was unjust, capricious, arbitrary and out of all good reason, and inconsistent with rule 29 of the agreement reading;

Finally, note too, that in the hearing, where the witnesses were available for examination and cross-examination, no question was pressed either by the claimant or his representatives about Assistant Master Mechanic Burton's and Car Foreman McPhearson's identification of the claimant. This "mistaken identification" argument of the organization's only came up later—apparently after it figured out that it had nothing else to argue.

There was no argument by the organization that the discipline was excessive for the offense.

The claim is without merit and must respectfully 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 waived right of appearance at hearing thereon. Claimant was charged with:

"Leaving your assignment without permission before completion of your tour of duty and falsifying your time card on January 16, 1968." tour of duty and falsifying your time card on January 16, 1968."

After an investigation and hearing, Claimant was suspended for five days. The Organization contends that such action was unjust, arbitrary and capricious.

Leaving Before Completion of Tour of Duty

Claimant was employed on the 8:00 A.M. to 4:00 P.M. shift at Carrier's Coach Yard. He was observed by Carrier officials near the number 9 track at Union Station at 4:02 P.M. It is stipulated that the distance between the two points is approximately two miles. Claimant was wearing street clothes and not working clothes at the time he was observed. The record does not indicate whether employes at the Coach Yard clean up and change clothes prior to the 4:00 P.M. check out time.

Claimant testified that he checked out at 4:00 P.M., handed in his time card, caught a taxi and "had green lights all the way."

In this regard, the Board finds that Carrier proved by a preponderance of the evidence that Claimant left his assignment prior to the end of his tour of duty.

Falsifying Time Card

The time card was not introduced in evidence, and was not put in the record. There was no testimony as to what appeared on the time card. The Assistant Foreman testified that he did not see it, but that "it may have been in with others" which were turned in.

In this regard, the Board finds that Carrier has failed to prove that Claimant's time card was "falsified".

As such the Board further finds that a five day suspension was too severe, and accordingly reduces the suspension to three days.

A W A R D

Claim is disposed of consistent with the findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of April, 1970.