

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A.F. of L. - C.I.O.
((Carmen)
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman W. R. Baker, Valdosta, Georgia was improperly dismissed from service from November 14, 1971 to December 1, 1972.
2. That accordingly, the Carrier be ordered to pay Carman W. R. Baker, Valdosta, Georgia for all time lost from November 14, 1971 until December 1, 1972 and that he be allowed all other benefits that he would have had if he remained in service including benefits under the Travelers Insurance Group Policy.

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 received training at Southern Technological Institute at Carrier's expense, for employment as carman which started July 3, 1970. On November 14, 1971 while on duty 11 P.M. - 7 A.M., he was observed by the General Foreman from 12:20 A.M. until 2 A.M. standing by a stove and performing no work. When directed by the foreman to perform certain work, he refused to do so and was then suspended pending investigation.

Testimony at the investigation substantially supported these facts and was corroborated by a carman who was a witness. Claimant was dis-

missed from service. In the handling on the property, it was agreed by the Organization, claimant and Carrier, after conference, that claimant would be restored to service with seniority unimpaired and with pay for approximately one half of the time lost. Claimant at that time also agreed to withdraw charges filed by him and pending at E.E.O.C. Claimant thereafter refused the settlement of his claim unless he received full back pay. The settlement offer was withdrawn but claimant was, nevertheless, restored to service with seniority rights unimpaired but with no back pay.

The Organization has contended that the Carrier violated the Procedure in Dealing with Grievances Rule 34, that the investigation was not fairly conducted, that claimant was not guilty of insubordination as charged, or in the alternative that the discipline was excessive.

At the conclusion of the hearing the claimant and his representative were asked if the investigation had been conducted, "in a fair and impartial manner and in accordance with your agreement?" Both answered in the affirmative. We have read the record and find no violation of the agreement in suspending the claimant. There was substantial testimony submitted at the hearing to justify the result. The discipline should be regarded as loss of pay only, since claimant was restored to service.

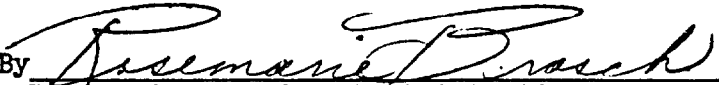
This Board will not interfere with a decision where there was sufficient or substantial evidence of insubordination. The discipline will not be disturbed because it was not arbitrary, capricious or unreasonable. Carrier's offer of settlement was without prejudice to its position and cannot be relied upon by claimant after he rejected it.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: **Executive Secretary**
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of May, 1974.