

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 106, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Washington Terminal Company

Dispute: Claim of Employes:

1. That under the current agreement car cleaner, Lorenzo Thorne, was unjustly dealt with when he was dismissed and dropped from the rolls and seniority of the Washington Terminal Company effective August 23, 1976.
2. That accordingly the Washington Terminal Company be ordered to return car cleaner Lorenzo Thorne to the service of the Washington Terminal Company with seniority and vacation rights unimpaired and compensated for all time lost since July 27, 1976.

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 suspended on July 26, 1976, for his actions in relation to two of the Carrier's security officers on that date, following an incident which had occurred with one of the officers the previous day. Following a fair and impartial hearing, the Claimant was dismissed from service on August 23, 1976.

The Carrier determined from the investigative hearing that the Claimant had refused to give the security officers answers to reasonable questions as to his name and status and had subsequently become resistant and belligerent. While other testimony was offered to suggest that the security officers had been provocative in their conduct, the record does

not support a finding that the Carrier acted in an unreasonable or arbitrary fashion in reaching its decision that the Claimant had been disorderly. Whether or not the Claimant was acting in an improper fashion in operating a bicycle on the Carrier's property is not the issue here. What is at issue is whether or not the Claimant acted in an improper manner on July 25 and July 26, 1976, when questioned. The Board finds no reason to disturb the finding of the Carrier.

The severity of the penalty might be questioned were it not for the previous record of the Claimant, which shows a 30-day suspension only four months earlier for two incidents of threatening supervisors with bodily harm. Had the Claimant taken the earlier disciplinary penalty to heart, it seems clear that he could have so conducted himself as to avoid the confrontation which caused his dismissal. He failed to do so, and the Carrier's action cannot be gainsaid.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1978.