

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough 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 Employee:

1. That under the current agreement, Upgraded Carman Glen R. Selby was unjustly dealt with when he was suspended from the service on August 22, 1976 and subsequently returned on September 8, 1976.
2. That the Washington Terminal Company be ordered to pay Upgraded Carman Glen R. Selby 12 working days and clear his record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Carrier contends that Claimant Glen R. Selby was in violation of general Rule "N" of the rules and regulations of the Washington Terminal Company, which prohibits employees from entering cars, except in performance of their duty, and prohibits loitering in cars, and in violation of General Rule "O" "which reads in part, 'No employee shall be absent from duty,' when employee 'was absent from your position for 25 minutes at approximately 2:30 p.m. on August 22, 1976.'"

When Claimant could not be readily located at his usual place of work on August 22, 1976, at approximately 2:30 p.m., an attempt was made to locate him by radio. When he did not respond to the calls, the Foreman proceeded to look for him. When he was finally located, he was in a passenger car talking to two other employees. He was immediately taken out of service and subsequently notified to appear for investigation.

At the investigation, Claimant stated he had to use the toilet facilities and upon finding no paper in the one normally used, he utilized the toilet in one of the cars. He states he did not know that another toilet alleged to have been available was there. The record further confirms that the other toilet is normally locked and the key is retained by the Storekeeper.

There are reasonable grounds upon which Claimant's reasons can be accepted. However, it is clear that he was found talking to other employees in the car. Even though it may have been necessary to use the toilet facility in the passenger car, Claimant should have immediately returned to his work location. This is particularly true since he had been away some 15 to 25 minutes. There are grounds to find some degree of guilt.

However, Claimant's removal from service pending the hearing is another matter. Rule 29 of the Agreement provides that employees may be removed from service pending a hearing where major offenses are involved. Major offenses are generally recognized as those which would endanger the employee, fellow employees, the public, or interfere with the operations of the Carrier. See Third Division Awards 20055 and 20913. Furthermore, Foreman Buckler at the investigation acknowledged that the offense for which Claimant was charged did not constitute a danger to the Carrier and was not a major violation.

We find that Claimant was improperly withheld from service pending the hearing. No time was lost subsequent to the hearing. Claim 1 will therefore be sustained. Claim 2 is sustained only for the twelve (12) days wage loss.

A W A R D

Claim sustained as per findings.

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 15th day of August, 1978.