

The Second Division consisted of the regular members and in addition Referee James F. Searce 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 Employees:

1. That the Washington Terminal Company violated the controlling agreement when they removed Mary E. Jones from service January 12, 1977 and suspended her from service for six working days.
2. That accordingly the Washington Terminal Company be ordered to compensate Claimant Mary E. Jones for six working days she was caused to lose by this unjust suspension.

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.

The claimant while on duty, fell and struck her chin and right arm. While under treatment for small lacerations, indirect testimony was offered that the nurse detected the odor of alcohol in addition to slurred speech and incoherence. The claimant soon after met with two foremen. The claimant refused to take a sobriety test. Both foremen testified they were under the opinion that the claimant was, in fact, intoxicated. The claimant was then removed from service pending an investigation. As a result, the Carrier assessed the claimant a 10-day calendar day (six working days' suspension).

There is only one procedural issue. The Organization argues the claimant's case was prejudiced when, after the investigation during the appeal process, the company refused to provide a copy of the nurse's report of the claimant's injury. The company counters by referring to the Hearing Officer's direct invitation to the Union Representative to call the nurse

as a witness during the hearing. The invitation was declined. While the Organization should have requested the testimony of the nurse during the investigation, if they felt it relevant, we feel compelled to caution the Carrier that under different circumstances a refusal to disclose direct evidence that may be relevant to a claimant's case may be considered prejudicial.

Regarding the merits, the Organization contends the claimant was actually disciplined for sustaining an injury. We find no evidence to this effect. To the contrary, we find there is substantial evidence to uphold the Carrier's finding the claimant was intoxicated while on duty. In light of the evidence we do not find the Carrier's assessment of a six actual working day suspension arbitrary or capricious.

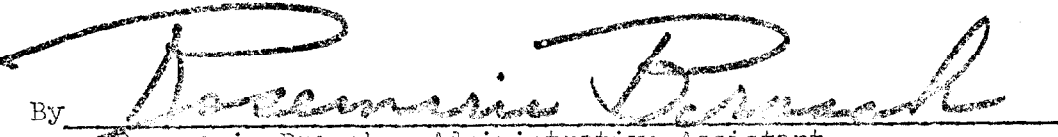
A W A R D

The Claim is 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 28th day of February, 1979.