

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. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carman B. W. Bey, Jr., Kansas City, Kansas, from service on September 28, 1977, following an investigation conducted on August 17, 1977, in violation of the controlling Agreement.
2. That Carman B. W. Bey, Jr. be restored to service with all seniority rights, vacation rights and benefits that are a condition of employment. That he be compensated for all time lost plus six percent (6%) annual interest. That he be reimbursed for all losses sustained because of loss of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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.

Carrier requests the Board to dismiss this case on the basis that the dispute has been "radically altered" from the dispute handled on the property. The dispute has to do with the dismissal from service of the Claimant in connection with his "indifference to duty" on August 3, 1977. The changes in the dispute referred to by the Carrier have to do with the nature of the remedy sought by the Organization in the event the claim is sustained by the Board. The Board finds that the essential nature of the case has to do with a claim of unjust dismissal and as such is properly before the Board for resolution.

Claimant was charged prior to investigation with violation of General Regulations B, C, D and F. The notice of dismissal following the investigative hearing finds the Claimant guilty of violation of General Regulations B, D, and P. These read as follows:

"B. Employees who are negligent or indifferent to duty insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who conduct themselves and handle their personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service."

"D. Employees whose duties are connected with the movement of trains or engines must not, while on duty read magazines, newspapers, or other literature not concerned with their work."

"P. Employees must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority.

Claimant is a Carman-Inspector. He was found by his supervisor "in the boiler room on a bench reading a magazine" while on duty. Claimant alleges that he had no currently assigned duty at the moment; that waiting in the Boiler Room is a common practice by employees not otherwise assigned; and that he had simply "picked up" a magazine.

More significantly, the supervisor found that Claimant's radio was turned down to the lowest volume, making it impossible for him to hear calls for his services from supervision. Further, the supervisor testified that he had been trying to reach Claimant on the radio because he had work for him to perform and, as a result, such work was delayed. There was further testimony that on numerous previous occasions there had been difficulty in reaching Claimant because he failed to have his radio with him or caused it to be in a non-receiving condition. These considerations are far more serious than the fact that the Claimant was found in a particular location not performing duty at the moment. As shown by the record of the investigative hearing, Claimant was guilty of violation of the cited General Regulations.

In support of the severity of its disciplinary action, the Carrier referred to Claimant's disciplinary record. Claimant was hired in 1973. In February 1975, the record shows he was dismissed from service for "failure to complete REB lessons", but was reinstated the following month. In April 1975 he was again dismissed for "failure to properly perform his duties". Again he was reinstated, this time one year later. While the record shows no more than these bare facts, no defense was made that these dismissal were for other than serious lapses in the Claimant's performance.

The record shows three subsequent letters concerning failure to report off, "delinquent REB lessons" and failure to make repairs. The record demonstrates the history of an employee who, in a relatively short service period, has been neglectful of his duties on a number of occasions. There was no dispute that the events of August 3, 1977, during which Claimant had his radio tuned to inaudible volume, was but one of a series of such incidents. Employees whose work assignments necessarily are made by such means of communications can reasonably be expected to be available through such means at all times.

The incident would not, by itself, be sufficient to cause Claimant's dismissal. In the context of his disciplinary history, however, the Carrier's action was neither arbitrary nor unreasonable.

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 28th day of March, 1979.