

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 Employee:

1. That the Washington Terminal Company violated rule 29 of the controlling agreement when Ronnie E. Corbin was unjustly suspended from the service on Tuesday February 21, 1978. Then subsequently dismissed April 10, 1978. Later on September 18, 1978, he was restored to service without pay for time lost.
2. That accordingly The Washington Terminal Company be ordered to reimburse Claimant Ronnie E. Corbin for all time he was caused to lose by this unjust suspension and dismissal and the charges be expunged from 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 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 from service on February 21, 1978 and, following an investigative hearing, was dismissed from service on April 10, 1978 for violation of various portions of Rule "H". The charge involved attempting "to enter kitchen area of Amtrak Diner 8320, Train 440 in Track 28 by banging on the door with a large red wrench".

The Board finds that the hearing was conducted in a fair and proper manner in two sessions and that the Claimant and his representatives had full opportunity for defense.

The Board finds no basis on which to question the Carrier's judgment that the Claimant was attempting improper and forcible entry into the diner kitchen, as directly observed by a Carrier Police Officer. Claimant's explanation of the justification for his presence at the door is not credible. Although a later court trial resulted in acquittal of the Claimant, it is well established that such court actions -- whether favorable or unfavorable to the defendant -- do not necessarily control or limit disciplinary investigation and penalty by the employer.

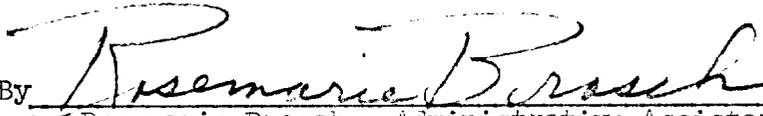
The charges, as proved to the Carrier's satisfaction from the investigative hearing, warrant a penalty of dismissal.

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 16th day of January 1980.