

The Second Division consisted of the regular members and in addition Referee James R. Cox when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
( The Northeast Illinois Regional Commuter Railroad Corporation

Dispute: Claim of Employees:

1. That Coach Cleaner T. Z. Buckner was unjustly suspended from the service of the Northeast Illinois Regional Commuter Railroad Corporation for a period of five (5) days, starting with August 8, 1983 through August 12, 1983.
2. That the Northeast Illinois Regional Commuter Railroad Corporation violated Rule 34(g) of the current Agreement dated September 1, 1949, as amended.
3. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to compensate Coach Cleaner T. Z. Buckner in the amount of eight (8) hours pay, at the applicable rate, for each and every day of this unjust suspension.
4. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to pay Coach Cleaner T. Z. Buckner interest at the rate of 12% per annum for any and all compensation that he may receive as result of this claim.

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 employes 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 sole charge directed against Coach Cleaner T. Z. Buckner involved his alleged failure to perform duties assigned by his Supervisor at approximately 4:40 p.m., June 17, 1983. The alleged instruction was to clean suburban coach windows on a train located at Chicago's Union Station on Track 13.

Assistant Electrical Foreman Weatherspoon stated that he saw Coach Cleaner Buckner walk onto the concourse from Track 13 at approximately 4:40 p.m., and, that when he reached Track 3, he spoke with him to tell him that his quitting time was 4:50 and to go back and clean windows until that time. He stated that Buckner refused. The Foreman testified that he asked another employee what time it was and then returned to Buckner, who, at this time (according to Weatherspoon) was with Peter Hawkins. He asked Hawkins what time it was and, according to Weatherspoon, Hawkins told him twelve minutes until five.

Weatherspoon stated that he had directed Buckner to return to his work at 4:43. The evidence does not establish that an order was given seven minutes before washup time.

Hawkins testified that Weatherspoon asked him the time at 4:50. He was then talking to Buckner, who had "just walked up". Weatherspoon stated, according to Hawkins, that he was going to write a violation slip on Buckner. Just prior to Buckner approaching Hawkins, Hawkins stated that he saw Weatherspoon talking briefly with Buckner.

Buckner denies that Weatherspoon ever asked him at 4:40 or thereafter that afternoon to clean windows. He claims that he first saw Weatherspoon during that part of the afternoon at 4:48 p.m., just before cleanup time. He further explained that he completed a car cleaning assignment about 4:46 and walked over to Track 5. He stated as he approached Hawkins, the Foreman hollered at him to wash windows and that shortly thereafter, when he reached the two men, asked Hawkins the time. While Foreman Weatherspoon puts their conversation on Track 3, both Watkins and Buckner state that he spoke to them at Track 5. Hawkins indicated that it would take an individual at least six or seven minutes to walk through the crowds in the station at that time, from Track 13 to Track 5. This time interval estimation was not disputed and if an order were given, it would have been in very close proximity to wash-up time.

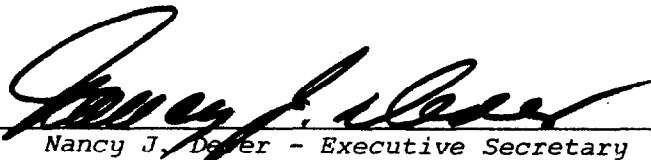
Buckner was suspended for five days in August, 1983. While Claimant may have been an "early quit", the charge specified insubordination. The Carrier has not sustained its burden of proof in this case and the record does not contain evidence sufficient to support the insubordination charge. Item 4 is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1985.