

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10748  
Docket No. 10789  
2-WTC-CM-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (  
(Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated Rule 29 of the controlling agreement when car cleaner Deborah T. Alexander was unjustly suspended for five (5) days as a result of investigation held on October 31, 1983.

2. That accordingly the Washington Terminal Company be ordered to reinstate Ms Alexander with compensation for her net wage loss, seniority and vacation rights unimpaired, and made whole any loss due to health and welfare benefits not continued.

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 employees 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.

On September 21, 1983 the Claimant was employed as a Car Cleaner, had finished cleaning a passenger coach and was found by a Supervisor sitting down therein reading a newspaper, following which she was instructed to go to another car that required immediate cleaning.

In a notice dated October 21, 1983, the Claimant was directed to report for a hearing on October 31, 1983, on the following charge:

"Violation of Washington Terminal General Rule 'N', Paragraph 4, which reads in pertinent part: '. . . Loitering in cars is prohibited, in that on September 21, 1983, about 11:30 a.m., a member of supervision observed you loitering on Car 20013 of Train 184."

At the hearing the Claimant testified that she had finished cleaning the car and had just picked up a newspaper found on the car and had been sitting there five or ten minutes when the Supervisor appeared with instructions to go to another car to clean it. She contended she was on her lunch break and was waiting for the next train to arrive without going to the lunchroom at another level in the terminal. The Supervisor testified that she was not eating, that he saw her later on the way to the lunchroom and also that it was against regulations to eat on the cars.

It was not disputed that the Claimant testified that lunch breaks are at random, depending on the jobs at hand and that it is customary for the Car Cleaners to remain in the cars which they finish so the Supervisors can readily locate them for their next assignments.

Nonetheless, it was the Supervisor's view that the Claimant was loitering and he reported it accordingly.

The Board finds that suspension from service for a period of five days without pay commencing January 11 through 15, 1983, was excessive. The suspension is modified to a reprimand which will show on the Claimant's record in lieu of the five day suspension.

The Terminal Company is required, therefore, to compensate the Claimant for her net wage loss during the period involved and at the rate in effect on those dates.

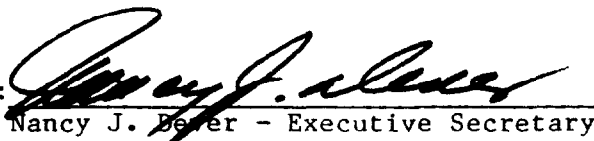
Rule 29 does not permit her being made whole for any loss due to Health and Welfare benefits not continued. Seniority is unimpaired. Vacation rights are governed by the Vacation Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.