

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24815
Docket Number MW-24600

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The ten (10) days of suspension imposed upon Machine Operator F. G. Washington for alleged "improper conduct as driver of S.P. Bus on April 6, 1981" was excessive and wholly disproportionate to such charge (System File MW-81-100/314-86-A).

(2) The claimant shall be compensated for all wage loss suffered and he shall be reimbursed for fines (\$100) he was required to pay because of expired license plates, expired safety inspection sticker, defective muffler and defective signal lights on Carrier's Bus 2424.

OPINION OF BOARD: On April 6, 1981 the Claimant, a machine operator, was instructed to drive a company bus to and from the Carrier's work site in Bay Town, Texas. The bus had expired license plates, an expired inspection sticker, an inoperative turn indicator and defective windshield wipers and running lights. The condition of the bus was known by the claimant's superiors as he had called their attention to this matter one week before and on the morning of April 6.

On the return trip the bus developed new difficulties and the manifold noises grew louder while the bus became more sluggish. Subsequently the bus was stopped by a police officer, who arrested all the crew on the bus. They were taken to jail and released only after posting bail.

The difficulty arose when the policeman tried to identify the driver but the claimant had left the driver's seat and taken a place in the rear of the bus with the other members of the crew. He did not want to take legal responsibility for the condition of the Carrier's vehicle.

After spending the night in jail and paying \$150.00 "in lieu of fines" he was released. Upon reporting for duty he was informed that he had been suspended for ten (10) days "for your improper conduct as driver of S.P. bus on April 6, 1981, your failure to identify yourself as driver of S.P. bus when Department of Public Safety Officer stopped the bus for violations. This is in violation of Rule 801...which reads in part as follows: Rule 801. Employees will not be retained in the service who conduct themselves in a manner which would subject the Railroad to criticism...Any act of misconduct or wilful disregard is sufficient cause for dismissal."

[From the testimony of both the Carrier witness and the Claimant it is apparent that the bus was stopped by the Department of Public Safety Officer because of the condition of the bus and not because of any illegal or erratic behavior on the part of the driver.] Further, the Assistant Foreman had been reluctant to drive the bus because of his record of traffic offenses and had asked the Claimant to drive in his stead. Moreover, the Claimant had agreed to do so only under protest at the bus' condition. [Thus it would be correct to conclude that such "criticism" as the Railroad encountered is more to be laid at the Carrier's

5 doorstep than the Claimant's. And it was natural for him to wish to avoid blame and the resultant traffic summons attached thereto. }

6 But his action of evasion was intentionally misleading and inappropriate, to which the police officer overreacted by arresting and jailing everyone on the bus.

Therefore, if the Claimant, the Carrier, the Assistant Foreman and the law enforcement officer are all at fault it would not be fair to hold only the Claimant to blame and penalize him for the entire mishap. We conclude that the Claimant should be liable for any fine he has been assessed for failing to acknowledge that he was driving the bus but should be reimbursed for any fine paid for the vehicle defects. Also the claim for the ten (10) days suspension is sustained and the Claimant should be made whole in accordance with the provisions of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

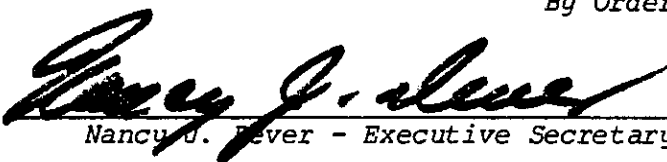
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 16th day of May, 1984