

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24405
Docket No. 44110
94-1-93-1-C-4618

The First Division consisted of the regular members and in addition Referee M. David Vaughn when the award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
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(Chicago and North Western Transportation
(Company

STATEMENT OF THE CLAIM:

"The BLE-C&NW General Committee of Adjustment requests the Division compensate Engineer S D. Garls (Western Powder River District) a total of ten (10) days compensation plus time spent at investigation, discipline entry removed from service record and removal from the C&NW Discipline System.

Engineer Garls was held out of service March 26th through April 1, 1993 pending investigation and was subsequently removed from service by Discipline Notice No. 2334 for five days following an investigation on the following charge:

'Your responsibility for your failure to conduct yourself in a manner that the Company will not be subject to criticism or loss of good will when you urinated in a Worthern Van Company crew van in the presence of Van Driver Vicki Smith while being transported from your train, 8555 East, at M.P. 60 to Bill, Wyoming, while you were assigned as a Crew Member on the 8555 on duty Bill, Wyoming, 0200 hours on March 26, 1993.'

FINDINGS:

The First 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 employee 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 were given due notice of hearing thereon.

Claimant was employed by the Carrier as an Engineer. On March 26, 1993, at 0200, Claimant and his crew reported for duty at Bill, Montana, to handle Train HSB DX to be loaded at a Mine and returned to Bill. At 1355 hours, Claimant and his crew were relieved under the Hours of Service law at Mile Post 60.

The Carrier contracts with Worthern Van Company ("Worthern") to provide shuttle and other crew transportation. A Worthern van, driven by a female driver, picked up the crew near Mile Post 60 to return them to Bill yard.

During the trip, according to Claimant's testimony, he needed to urinate; and he requested the driver to stop at a rest area on the State Highway on which the van was operating. The driver refused, citing a Bulletin from the Carrier's Transportation Superintendent prohibiting van drivers from stopping en route. Claimant then called the Bill Operator to request permission to stop. Permission was denied, on the basis of the Bulletin. Claimant then requested the driver to stop along the highway to allow him to relieve himself. The driver again refused, citing her fear that she would lose her job. Claimant became angry at her.

Claimant then recovered an empty cup from the van's garbage sack, went to the back of the van, urinated, returned the cup to the garbage sack, and returned to his seat. The van returned to Bill at 1430 hours and tied up at 1445. The van driver reported the accident; and the Carrier convened an Investigation on April 12, 1993. At the hearing, the female driver testified that she had not been offended, that she believed the Carrier's Rule was inhumane, and that there were no hard feelings against Claimant or the Carrier as a result of the incident.

Claimant had previous urinary tract incontinence for which he had received treatment since 1969. His medical condition is documented in the record. The Carrier, through the same official who had prepared the Bulletin, removed Claimant from service March 26, 1993. He remained out of service until April 1, 1993. Following the Investigation, the Carrier issued a five day suspension. The suspension was in addition to the five days Claimant had already been held out of service.

The Organization protested the Carrier's action. The claim was progressed in the usual manner, without resolution, and was submitted to the Board.

The positions of the parties were set forth in thorough written Submissions. They are briefly summarized as follows:

The Carrier argues that Claimant was properly suspended for conduct subjecting the Carrier to criticism or loss of good will, in violating of Rule L, by urinating in the Worthern van in the presence of a female van operator. It points out that Claimant's condition had never been brought to the Carrier's attention in Claimant's 20 years of service. It points out that Claimant left only two inches or less of urine in the cup, raising questions as to his need, and that he did so only 10 minutes from his destination. The Carrier urges, therefore, that the Claim be denied.

The Organization argues that the Carrier's Bulletin and refusal to deviate from it was inappropriate and unreasonable. It points out that Claimant had a medical condition which required him to urinate; and it urges that Claimant did everything he could to avoid his ultimate response. The Organization points out that Claimant's conduct did not result in either criticism or loss of good will, citing the testimony of the female van driver in whose presence Claimant was forced to urinate. It urges that the Claim be sustained.

The Board turns now to review Claimant's conduct and the Carrier's disciplinary response. The Carrier's Rules must be reasonable as written and applied. To the extent that the Bulletin prohibited the van driver from stopping, upon reasonable request, to allow him to relieve himself, the Bulletin was unreasonable and created unnecessary potential for conflict and confrontation. To the extent the Carrier imposed discipline on Claimant for urinating in a cup in the van after having made all reasonable efforts to have the driver stop, as the Board concludes was the case, and in light of the Claimant's documented urinary tract problem - however long it had existed and regardless of whether it had been conveyed to the Carrier or how many inches of urine Claimant may have left in the cup - the application of the Bulletin was unreasonable.

AWARD

Claim sustained.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 7th day of November 1994.