

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Machinist Paul Mock for compensation equal to 60 days' pay as machinist, rate of 81¢ per hour, a total amount of \$388.80, for time lost due to being discharged, effective November 27, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Mr. Mock was, effective November 27, 1933, discharged; he was reinstated, seniority unimpaired, February 19, 1934.

POSITION OF EMPLOYEES.—The Committee takes the position that Mr. Mock was discharged due to his affiliation with the I. A. of M., and not for cause, as claimed by management; i. e., leaving the premises without permission. We are offering, to offset this claim, Exhibits A and B (affidavits and investigation papers of Mr. Mock), wherein he informed the general foreman that he would "waive his rights (seniority) until I was called back in my department." Also various other items in investigation wherein Mr. Mock defended his position with the frank statement that he did not know how to operate the machine to which assigned.

We contend that it is not now, and never has been, the practice of the railroad company to force men on jobs or machines with which they are not familiar.

We also contend that it has been, prior to October 31, 1934, the general practice of the railroad company when posting jobs, to specify in bulletin that successful bidder "must be qualified, etc." We also contend that the railroad company never previously, nor since, requested Mr. Mock to operate machine of any description.

You are respectfully referred to that part of the shop superintendent's letter wherein he states that Mr. Mock left the premises November 27, 1933, and came back December 11, 1933, he evidently insinuating that Mr. Mock could have been working during that period. Facts as established show that the Sedalia shops were closed from November 27, 1933, at 4:40 P. M., to starting time December 11, 1933.

You are respectfully referred to that part of the chief mechanical officer's letter, wherein he states that—"Mr. Mock on the above date left the premises and did not return for an investigation until December 11th. The facts, as developed in investigation, prove conclusively that the Sedalia shops were closed from November 27, 1933, at 4:40, to starting time December 11, 1933, and Mr. Mock, having on November 27th informed the general foreman that he would waive his rights until called back in his department, did not, until calling for card at check room, know that he was out of service.

We also contend that there is nothing of record to indicate Mr. Mock was reinstated on a leniency basis or that he had waived claim for compensation for time lost.

We are, therefore, in compliance with Rule 32 (e) of agreement, in effect as of 1929, and up to and including agreement of October 31, 1934:

"**RULE 32 (e).** If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

claiming compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—Mr. Mock employed as machinist in shops at Sedalia, Mo. On November 27, 1933, he was assigned to operate a

shaper in machining a crosshead gib for engine 1812, which work is recognized as that belonging to a machinist under our wage agreement rules. Mr. Mock refused to perform the work to which he was assigned by his foreman and departed from the company premises. He reported to the shop superintendent's office, December 11, 1933, requested and was afforded hearing under Rule 31 of our wage agreement. He was reinstated on a leniency basis effective February 19, 1934.

POSITION OF CARRIER.—Mr. Mock entered our employ October 16, 1922. On November 27, 1933, he was assigned by the foreman to operate a shaper in machining a crosshead gib for engine 1812. Mr. Mock refused to perform the work to which he was assigned and left the company premises, without permission, in violation of Rule 17 of our wage agreement with the shop employes, reading:

"Employes shall not lay off without first obtaining permission from their foreman to do so, except in cases of sickness or other good cause of which the foreman shall be promptly advised."

December 11, 1933, Mr. Mock called upon the shop superintendent, requesting a hearing under Rule 32 of our wage agreement. Hearing was promptly afforded, pursuant to our wage agreement rules (carrier's Exhibit A), at which Mr. Mock was represented by his chosen representatives, viz.: secretary and vice chairman of the machinists' organization, and shop chairman at the Sedalia shops.

Investigation identified as carrier's Exhibit B.

Mr. Mock admitted at the investigation that he had declined to perform the work of a machinist to which he was assigned by the shop foreman, and also admitted departing from the shop premises without permission, thus violating Rule 17 of our wage agreement with the employes.

Our wage agreement rules (carrier's Exhibit A) provide a manner in which employes who feel they have been unjustly dealt with may prosecute their case. In this instance Mr. Mock or his representatives did not appeal his case to the mechanical superintendent or chief mechanical officer or higher official, as provided for in the agreement; however, on January 31, 1934, assistant general manager and chief mechanical officer were at Sedalia, Mo., and Mr. Mock's case was brought to their attention by the shop committeemen, accompanied by general chairman of the machinists' organization. These gentlemen requested that consideration be given to Mr. Mock's return to service on a leniency basis in recognition of his past services in the Sedalia shops, and they were advised that appeals of this nature should be made through the local employing officer, the shop superintendent. Subsequently the chairman and secretary of the machinists' organization at the Sedalia shops appealed to shop superintendent on February 16, 1934, that Mr. Mock be returned to service. Following this conference, on February 17, 1934, shop superintendent met with Mr. Mock, at which conference the shop superintendent agreed to Mr. Mock's reinstatement with full seniority rights as of February 1, 1933, on a leniency basis, and under conditions expressed in shop superintendent's affidavit and accompanying affidavits of general foreman and chief clerk who were present at the conference with Mr. Mock (carrier's Exhibits C-1, 2 and 3).

There is no rule in our schedule that would sustain the employes' contention that Mr. Mock be compensated for the time he remained out of our service.

It is noted the employes claim an alleged monetary loss of \$388.80, whereas our records indicate that during the period Mr. Mock was absent he actually lost but \$303.26, based upon the shop working days at Sedalia during period November 27, 1933, to February 19, 1934.

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.

The parties to said dispute were given due notice of hearing thereon.

There was voluminous evidence submitted in this case. The file is a substantial one filled with affidavits and counter affidavits, and sharp conflict of facts between the parties, upon which it will serve no good purpose to comment.

The employe involved in this dispute was one of a group taken out of service for alleged cause and later reinstated.

Paul Mock was employed as a helper and later promoted to air brake mechanic. He had not heretofore been trained for nor requested to operate a machine. He told the foreman that he could not operate the machine and offered to waive his rights in favor of a junior employe, who could operate the machine, until such time as he was called back to his regular job. He was denied this privilege and was dismissed from the service.

The Division, after giving consideration to all of the evidence submitted by both parties, finds that Paul Mock was unjustly dismissed.

AWARD

Paul Mock shall be compensated for wage loss due to his dismissal.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING

Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1936.