

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 W. T. Foggo for compensation equal to 63½ days' pay as machinist, rate 81¢ per hour, a net amount of \$370.10, for lost time due to being discharged, effective November 20, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Mr. Foggo was, on November 20, 1933, discharged; he was reinstated February 19, 1934.

POSITION OF EMPLOYEES.—We take the position that Mr. Foggo was discharged due to his affiliation with the I. A. of M., and not for cause as claimed by management; i. e., "Mr. Foggo was taken out of service due to defective work performed on engine 1320."

We contend that Mr. Foggo was working under instructions of a supervisor and consequently was not responsible for the job as charged. We also contend that locomotive was only fired for test purposes, consequently there was no delay in train movement. Also there were no damages resulting from the alleged defect. Also the last date Mr. Foggo performed work on locomotive was November 17th; locomotive in question was not again fired until November 19th, indicating that this locomotive was either not badly needed or Mr. Foggo's statement (Exhibits C and D), that other men endeavored to make repairs, are correct.

We also contend that it is not now, and never has been, the practice of the Missouri Pacific Railroad Company to discharge employes because on numerous occasions it became necessary to make two or three efforts to make satisfactory repairs. Hundreds of instances could be cited where conditions arose, making it necessary to perform a certain job a number of times before the results were satisfactory, and without even a reprimand for the employes involved.

You are respectfully referred to Exhibits A, B, C, and D (investigation paper, affidavits and letter), all of which indicate Mr. Foggo's dismissal was prearranged.

You are respectfully referred to Exhibits E and F (statements). These statements support Mr. Foggo's claim that other mechanics endeavored to make repairs on turret valve, engine 1320, and failed. These men were not members of the I. A. of M. and were not discharged. You will note that this work was performed on the night of November 16, 1933, and just prior to the time Mr. Foggo was requested to examine the job and admitted the fact that it looked worse before any repairs were made, management intimating that this was condition of job as left by Mr. Foggo. Facts, as established, prove that W. H. Barton and E. J. Hobbs were the parties performing work on this job just prior to above mentioned examination.

We might also state that during the months of November and December 1933, more than 100 men in the shop crafts on Missouri Pacific Railroad were discharged and all of them were members of standard railway labor organizations. This, notwithstanding the fact that only approximately 50 percent of the employes were members of standard organizations.

We contend there is nothing of record to indicate that Mr. Foggo was reinstated on a leniency basis, or that he had waived claim for compensation. We are, therefore, in compliance with Rule 32 (e) of agreement, in effect as of 1929 and up to and including agreement of 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 of aforementioned.

CARRIER'S STATEMENT OF FACT.—Mr. W. T. Foggo was employed as machinist in back shops at North Little Rock, Arkansas. On November 19, 1933, Mr. Foggo was suspended from service account unsatisfactory work on engine 1320. Afforded formal hearing November 20, 1933, at which he was represented by the chairman and secretary of the machinists' craft at North Little Rock shops, following which he was removed from service effective November 20, 1933.

On February 17, 1934, Mr. Foggo appealed to shop superintendent that leniency be extended and that he be returned to service with his former seniority rights, which request was granted with the distinct understanding he would not be compensated for any time he may have lost. He returned to work February 19, 1934.

POSITION OF CARRIER.—The shop superintendent, while investigating the delay in getting engine 1320 out of the shops, developed that this engine was reported out of shop on November 10, 1933. The inspection developed that the main throttle valve in turret, upon which Mr. Foggo was working, was defective, which made it necessary to hold the engine in the shop to be worked over again. November 15, Mr. Foggo was again assigned to the job and when the engine was fired on November 16 the same trouble arose. Mr. Foggo was again assigned to repair the valve and after he reported work completed the engine was again fired on November 17, 1933, and the same trouble appeared. This being the third time Mr. Foggo had reported the work to which he was originally assigned on November 10 as being completed, but failed in each instance, he was suspended from service and afforded formal investigation by the shop superintendent, as required by our rules with the shop employes (See carrier's Exhibit A), on November 20, 1933, at which he was represented by representatives of his choice, chairman and secretary of the shops crafts at the North Little Rock back shops.

Investigation identified in this case as carrier's Exhibit B.

Mr. Foggo was formally dismissed from the service following investigation November 20 account unsatisfactory work.

On November 22, 1933, Mr. Foggo appealed for reconsideration of his dismissal (See carrier's Exhibit C), and subsequently his representatives, chairman and secretary of the shop crafts, appealed (See carrier's Exhibit C-1).

On February 3, 1934, while assistant general manager and chief mechanical officer were at Little Rock, general chairman of the machinists discussed Mr. Foggo's case with them and plead that leniency be extended and that Mr. Foggo be returned to work. No decision at that time was rendered on the general chairman's verbal plea; however, on February 17, 1934, Mr. Foggo personally called on the shop superintendent renewing his plea that leniency be extended and that he be returned to service with his former seniority rights. His request was granted with the distinct understanding he was being returned on a leniency basis, that his seniority rights would be restored, but that he would not be paid for any time he may have lost since November 20, 1933—note carrier's Exhibit D and D-1, affidavits of shop superintendent and his chief clerk, who was present at the conference between the shop superintendent and Mr. Foggo on February 17, 1934.

In June, 1935, some year and four months following Mr. Foggo's reinstatement, general chairman filed claim in favor of Mr. Foggo was sixty-three and one-half days' time lost between November, 1933, and February, 1934, contending that Mr. Foggo should not have been dismissed as there were four other machinists working on this same job and failed to perform the work satisfactorily and none of them was disciplined. The facts in the case are that this turret valve was given to another mechanic and on his first attempt repairs were made satisfactorily, which proved conclusively that Mr. Foggo was either incompetent or not inclined to perform the work of a machinist to which he was assigned.

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.

The evidence in this case does not support the petition of the employes for compensation for wage loss.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

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