

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 John Gates for compensation equal to 105 days, hourly rate 81¢, amount involved \$684.45, no other earnings during that period, net loss \$626.01, compensation claim for time lost \$684.45 less 10%.

EMPLOYEES' STATEMENT OF FACTS.—Mr. Gates was, on November 8, 1933, discharged; he was reinstated, seniority unimpaired, February 8, 1934.

POSITION OF EMPLOYEES.—We take the position that Mr. Gates was discharged due to his affiliation with the I. A. of M. and not for cause as claimed by management; i. e., calling another employe a vile name. We are offering to offset this claim and to substantiate our claim, Exhibits A, B, C, D, E, and F. We take the position that it is now, and always has been the practice of employes to use profane language and vile names in their usual conversation, in fact, "cussing out" each other is common practice with no offense by either party.

You are respectfully referred to Exhibit D, affidavit, wherein an employe who was present at time of supposed controversy between Machinist Robins and Mr. Gates, did not hear the improper names as charged.

Exhibits E and F support our claim of common practice of use of language of nature such as Mr. Gates was supposed to have used.

We contend that management did not establish a case against Mr. Gates which would warrant discharge, and it is our contention that if the charges of quarreling with a fellow employe during working hours and calling him vile names had been the real cause of discharge, both parties were equally at fault and would have been similarly dealt with. Mr. Gates was at that time a member of I. A. of M. and Machinist Robins was not, and Machinist Robins was not reprimanded for quarreling with a fellow employe.

We contend that there is nothing of record to indicate Mr. Gates was reinstated on a leniency basis or that he 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. John Gates, employed as machinist at Kansas City, Missouri. On September 8, 1933, following formal investigation afforded him pursuant to our wage agreement rules, he was relieved from service for violation of Transportation Rules 800 and 801 reading:

"800. Civil, mannerly deportment is required of all employes in their dealings with the public, their subordinates, and each other. Boisterous, profane or vulgar language is forbidden. Courtesy and attentions to patrons is demanded. Employes must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate superiors."

"801. Employes who are dishonest, immoral, quarrelsome, or otherwise vicious, will not be retained in the service."

on September 7, 1933.

mechanic, at which conference local chairman of the machinists, and the master mechanic's chief clerk, were present. At this conference Mr. Gates was told that his plea for reinstatement would be acted upon favorably under the conditions expressed by the assistant general manager in his conference with the general chairman, as related above, following which Mr. Gates apologized to Machinist Robins, whereupon he was returned to work—see carrier's Exhibit D, D-1, and D-2, affidavits from master mechanic, his chief clerk, and local committeeman of machinists.

In June, 1935, some year and four months following Mr. Gates' return to service, the general chairman of the machinists filed claim that Mr. Gates be compensated for the alleged time he lost between September, 1933, and February, 1934, contending (quoting from the general chairman's letter June 9, 1935) :

"Mr. Gates was discharged on the charge that he called another employe a bad name, to which the said employee took no exceptions, and in a written statement states that he does not even know what the remark was, that I was supposed to have made."

The facts in the case are that Machinist Robins' statement that Gates had been quarrelsome and used vile language in his altercation was confirmed by statement of another employee at the investigation afforded Mr. Gates prior to his dismissal on September 8, 1933 (see carrier's Exhibits B, B-1, and B-2).

The general chairman's claim for compensation was declined as there was no basis therefor under our wage schedule rules, Gates not having been unjustly suspended or dismissed from the service, but justly so, and subsequently reinstated on a leniency basis at request of the employees and their representatives.

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 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.

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

John Gates, machinist, was discharged for violation of Transportation Rules 800 and 801, charged with the use of offensive language toward another employee.

Review of the record of investigation does not warrant dismissal of Gates.

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

AWARD

John Gates 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.