

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 R. B. Smith for compensation equal to 92 days, 5½ hours pay as a machinist, rate 86¢ per hour, total amount claimed \$573.92, for time lost due to being discharged on November 16, 1933.

EMPLOYEES' STATEMENT OF FACTS.—That R. B. Smith was, on November 16, 1933, discharged; he was reinstated February 17, 1934.

POSITION OF EMPLOYEES.—We take the position that R. B. Smith was discharged due to his affiliations with and activities in the I. A. of M., and not for cause as set forth by railroad company; i. e., Mr. Smith was discharged on the charge that he checked out and left the premises without first obtaining permission. Exhibit A, investigation papers, indicates that Mr. Smith was first being investigated for smoking while on duty; evidence indicated that he was not smoking, so investigation was changed to the above mentioned charges.

Exhibits A, B, and C, investigation papers and affidavits, prove that the master mechanic convinced Mr. Smith that he was out of service. You are respectfully referred to master mechanic's letter of June 12, 1935, wherein he states that "My records do disclose that investigation was started for smoking and that an investigation was held for leaving premises without permission"; also that "records do not show where Mr. Smith was discharged." To offset this you are respectfully referred to that part of chief mechanical officer's letter wherein he states "Mr. Hanna agreed to return him (Smith) to service on leniency." We contend that by this offer the master mechanic admitted that Mr. Smith had been discharged, as leniency can only be extended in cases of discharge.

We contend that Mr. Smith did, on November 16, 1933, after having been called in to master mechanic's office and given a partial investigation, leave the premises with the belief that he had been removed from service; and we contend that copies of investigation and affidavits, Exhibits A, B, and C bear out this contention.

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

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."

we are claiming compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—R. B. Smith, machinist, Little Rock, Ark., was observed loafing while on duty in an engine cab on November 16, 1933. He was directed by general roundhouse foreman to report to master mechanic. Mr. Smith promptly reported and verbally admitted to the master mechanic that he was guilty of the conduct observed by the general roundhouse foreman. He was told that formal investigation would be afforded him and advised to obtain his representatives. Mr. Smith left the master mechanic's office and after an absence of some 30 minutes, when he did not return, inquiry by the master mechanic developed that Mr. Smith had "checked out" at 10:51 A. M., November 16, 1933, and left the company's premises. Mr. Smith was afforded formal investigation on November 18, 1933, as provided for in our

Following the master mechanic's suggestion to Mr. Smith's brother-in-law, who had interceded in his behalf, Mr. Smith on February 16, 1934, called upon the master mechanic to personally present his plea for reinstatement. The conditions under which Mr. Smith was permitted to return to service are as stated in the master mechanic's affidavit dated August 22, 1936 (carrier's Exhibit F), viz:

"Upon plea for leniency by his brother-in-law, Mr. Homer Atkins, Internal Revenue Collector for the State of Arkansas, and the plea of his representatives in the investigation (carrier's Exhibit D) that he be given another chance."

Mr. Smith was returned to work February 17, 1934, with the distinct understanding between the master mechanic and Mr. Smith as a result of the conference of February 16, 1934, that leniency was extended under circumstances stated above, and that Mr. Smith would be restored to his former seniority rights but would not be compensated for any time he may have lost between November 16, 1933, and the effective date of his reinstatement.

In the presentation of this case to the carrier, general chairman of the machinists contended that Mr. Smith was dismissed without the formality of an investigation. The carrier's contentions summarizing its position are—

1. Mr. Smith was not dismissed from the service.
2. Mr. Smith terminated his services with the Missouri Pacific by his own acts, viz, by checking out and leaving the shop premises without permission.
3. That he was reinstated on a leniency basis and with a distinct admission on his part of his guilt and that any time he may have lost was a result of his own act, the carrier being in no wise whatsoever responsible under rules governing working conditions of the mechanical employes.

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.

R. B. Smith was originally charged with and suspended for being in cab of engine #6626 at 10:25 A. M., November 16, 1933, with cigarette and match, preparing to smoke. He reported for investigation November 16, 1933, on that charge. The investigation was started, then postponed to permit Smith to get representation.

On November 18, 1933, he again reported for investigation, but, instead of same being conducted on the original charge, he was investigated for leaving the premises without permission, the latter charge was made due to Smith leaving the premises November 16, after the postponement of the investigation, at which time he understood he was out of the service.

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

AWARD

R. B. Smith 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.