

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 E. L. Brown for compensation equal to 56 days, 4¾ hours pay as a machinist, rate 81¢ per hour, a gross amount of \$366.12, for time lost due to being discharged, effective November 24, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Mr. Brown was, on November 24, 1933, discharged; he was reinstated, seniority unimpaired, on February 16, 1934.

POSITION OF EMPLOYEES.—The committee takes the position that Mr. Brown was discharged for causes other than set forth by railroad company, no specific cause specified in superintendent of shops' notice of dismissal under date of November 24, 1933.

We are offering Exhibits A, B, and C and D, affidavits and investigation papers, to substantiate our contention.

First and second paragraphs of page 1 of Exhibit A indicate that considerable pressure was used in an endeavor to force Mr. Brown to pay company union dues. Third paragraph of same page and exhibit indicates that Mr. Brown was arbitrarily switched from his regular job on machine to erecting floor. Wish to call your attention to the fact that another machinist was immediately assigned to the machine from which Mr. Brown was moved. Mr. Brown informed his foreman that he had had very little experience on the class of work to which he was assigned (laying out shoes and wedges) and requested that an experienced apprentice be placed with him; this request was refused.

You are also referred to that part of same paragraph, which caused the error in laying out shoes and wedges. We also contend that it is not now and never has been the practice of the management to place machinists on jobs with which they were not familiar; in fact, the practice prior to October 31, 1934, was to refuse to permit a machinist to bid in or be assigned to a job unless he was qualified to handle same.

We also contend that the small discrepancy for which Mr. Brown was presumably discharged would under ordinary circumstances have been passed up (the necessary change to correct this mistake would have been L. F. shoe and wedge changed 1/32 and L. No. 2 changed scant 3/128). We claim that many locomotives are permitted to depart from shops with wheels and rods out of tram, even more than in this case.

You are also respectfully referred to first paragraph of page 2, Exhibit A, of conversation between Mr. Brown and the foreman; also pressure applied by company union secretary.

You are respectfully referred to Exhibit C, wherein superintendent of shops fails to show cause why Mr. Brown was being discharged.

You are also requested to make close study of Exhibit D, affidavits, which indicates unusual methods used in an effort to get Mr. Brown to return to work. There is nothing of record to indicate that Mr. Brown was returned to service on leniency basis or 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.”

requesting compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—Mr. E. L. Brown employed as machinist in back shops at North Little Rock, Arkansas. Entered service as an apprentice June 29, 1923; completed his apprenticeship and employed as machinist September 1, 1927; relieved November 24, 1933, account unsatisfactory work as a machinist on engine 1427. He was afforded formal investigation at which he was represented by representative of his choice in accordance with rules of our wage agreement.

Mr. Brown was reinstated on a leniency basis and returned to work February 16, 1934.

POSITION OF CARRIER.—On November 9, 1933, Mr. Brown was assigned to work of laying off the shoes and wedges on engine 1427. Time ordinarily required to perform such a job is eight hours; however, Mr. Brown did not complete the work to which he was assigned until 11:00 A. M. November 17, 1933. The shop superintendent's inspection developed defective workmanship performed by Mechanic Brown whereupon Mr. Brown was suspended from service and afforded formal investigation as required by our wage rules with the employees (See carrier's Exhibit A), at which he was represented by representatives of his choice, chairman and secretary of the machinists' craft, Little Rock shops.

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

On February 15, 1934, Mr. Brown appealed to shop superintendent that his case be reconsidered and that he be put back to work. The understanding reached by superintendent of shops with Mr. Brown is as expressed in shop superintendent's affidavit, marked carrier's Exhibit C, and accompanying affidavit of his chief clerk, who was also present at the conference the shop superintendent held with Mr. Brown on February 15, 1934, marked carrier's Exhibit C-1.

In June, 1935, or some year and four months following Mr. Brown's reinstatement, general chairman of the machinists filed claim in favor of Mr. Brown that he be compensated for the alleged time lost between November, 1933, and February, 1934, contending (quoting from the general chairman's letter of June 19, 1935):

"Investigation indicates there are considerable angles connected with the job, which would indicate that Mr. Brown was not by any means responsible for the mistake."

Mr. Brown was afforded formal investigation prior to his dismissal, at which he was represented by representatives of his choice, and he nor his representatives made any contention that he was not responsible for the unsatisfactory job. As a matter of fact, there were no extenuating circumstances developed in the investigation, Mr. Brown, as will be observed from the papers (carrier's Exhibit B), admitting full responsibility.

There is no rule in our wage agreement that would justify sustaining the general chairman's contention that Mr. Brown was unjustly dealt with, and his request that Mr. Brown be compensated was declined by the shop superintendent and his subsequent appeals to the chief mechanical officer and the assistant general manager were likewise denied.

FINDINGS.—The Second 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.

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.

E. L. Brown had been assigned to and was operating a machine on the machine side of shop since the completion of his apprenticeship in 1927. On the date in question he was taken off of his machine and assigned to work of laying out shoes and wedges on the erecting side. Another man was immediately assigned to his machine. Brown had very little experience in this line of work,

and so told his foreman, requesting that experienced help be furnished him on the job. His request was refused and he was dismissed for unsatisfactory work.

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

AWARD

E. L. Brown 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.