

NATIONAL RAILROAD ADJUSTMENT BOARD

Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYES.—Claim of Machinist G. P. Burlette for compensation equal to 63 days' pay as a machinist, rate of 81 cents per hour, a total of \$408.24, for time lost due to being discharged, effective December 5, 1933.

EMPLOYES' STATEMENT OF FACTS.—Mr. Burlette was, effective December 5, 1933, discharged; he was reinstated, seniority unimpaired, February 19, 1934.

POSITION OF EMPLOYES.—The committee takes the position that Mr. Burlette was discharged for cause other than set forth by railroad company, i. e., refusing to operate a crank pin lathe. We contend that he was discharged due to his affiliation and activities in standard railway labor organization.

We are offering as evidence Exhibits A and B, investigation papers and affidavit to substantiate our contention. The facts as set forth prove conclusively that foreman endeavored to force Mr. Burlette to operate a machine with which he was not familiar; the attempted operation of same would in all probability have resulted in damage to machine or material or perhaps personal injury or possibly all of the items mentioned, any of which would have meant dismissal. Due to Mr. Burlette's refusal to endanger person, material, or machine, he was given a "dummy" investigation and dismissed.

We contend that it is not now and never has been the rule, or practice of the Missouri Pacific Railroad Co. to require men to operate machines, or perform class of work with which they are not familiar. We also wish to call your attention to the fact, that, although Mr. Burlette has been employed as machinist by the Missouri Pacific Railroad for 13 years, he was never previously, or since the above-mentioned difficulty, requested to operate a machine.

We also wish to call your attention to the fact that prior to October 31, 1934, and in some instances since that date, it has been the practice of the Missouri Pacific Railroad Company to, when posting jobs for bids, embody in bulletin clause, language which reads about as follows:—"Senior bidder if qualified will be assigned" or "Senior bidder possessing necessary qualifications will be assigned."

You are respectfully referred to that part of the superintendent of shops' letter wherein he states that "Mr. Burlette was discharged for cause." We contend that the cause as set forth did not warrant discharge or even a reprimand.

You are respectfully referred to the chief mechanical officer's letter, second paragraph, wherein he states that "In the rules under which we were working a short time ago in our shops, it was necessary to give the senior man preference." We concur with this part of the chief mechanical officer's letter, and that was just what Mr. Burlette was endeavoring to do, exercising his seniority rights by preferring to not jeopardize his job by trying to operate a machine with which work he was not familiar but did prefer class of work with which he was familiar.

You are also referred to that part of the chief mechanical officer's letter, third paragraph, wherein he states "We have never asked anyone to do the impossible." However, Mr. Burlette was instructed to operate a complicated machine with which he was not familiar, of which the successful operation, without instructions, would have been very close to the impossible for Mr. Burlette.

There is nothing of record to indicate Mr. Burlette returned to service on leniency basis or 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 included in agreement of 1934:

"A. No; I did not operate it.

"Q. Do you know that on Dec. 2, 1933, only such machinists were employed at the shops to carry on the emergency store order work such as has been described on engine 6401?

"A. Yes."

On February 16, 1934, the chairman and the secretary of the machinists' organization called on the Shop Superintendent, pleading that consideration be given to Mr. Burlette's reinstatement as a machinist, following which on February 17, 1934, Mr. Burlette personally called on the shop superintendent for the purpose of discussing his case, and at this conference it was agreed that Mr. Burlette would be reinstated to service with restoration of his former seniority rights, but without pay for time lost on the basis of leniency in recognition of Mr. Burlette's prior period of service with the railroad, and with the further understanding that Mr. Burlette would, in future, perform his work in a satisfactory manner and carry out the instructions of his foreman. Affidavit from shop superintendent supported by accompanying affidavits of general foreman and chief clerk who were present at the conference between shop superintendent and Mr. Burlette, marked carrier's Exhibits D-1, 2, and 3.

Our wage agreement rules (carrier's Exhibit A), governs the procedure of disciplining employees. Mr. Burlette was dismissed from the service for cause. He was not unjustly suspended or dismissed, and there is no schedule rule to support employees' claim that Burlette be compensated for the alleged time he lost during the period he was out of our service. It is not unusual for employees' pleas for reinstatement to be given favorable consideration, and where the circumstances warrant, the carrier grants such pleas, but in all such cases of leniency where the employees are restored to service with their former seniority rights, they are not compensated for the time they were held out of service.

It is noted in this case the employees are contending for compensation amounting to \$408.24, whereas our records indicate that Mr. Burlette would have earned, had he not been disciplined during the period December 5, 1933, to February 19, 1934, a total of \$294.52, based on the shop working days at Sedalia.

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.

The evidence shows that G. P. Burlette was an airbrake machinist and had not operated a machine in over twenty years.

Burlette advised his foreman that he could not operate the machine and was then dismissed for failure to comply with the foreman's instructions.

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

AWARD

G. P. Burlette 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.