

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Carman Helper W. M. Martin for compensation equal to fifty-one days' pay at carman helpers' rate, 52 cents per hour, a net amount of \$212.16 for time lost due to being discharged, effective January 8, 1934.

EMPLOYEES' STATEMENT OF FACTS.—Carman Helper Martin was discharged from service January 8, 1934, and reinstated March 16, 1934.

POSITION OF EMPLOYEES.—That Carman Helper Martin was discharged from service by Missouri Pacific Railroad account of affiliating with the Brotherhood Railway Carmen of America and not for cause as claimed by management, i. e., Carman Helper Martin was removed from service account of violation of Rule 16 (b).

"**RULE 16 (b).** An employe absent on leave who engages in other employment will lose his seniority, unless special provisions shall have been made therefor by the proper official and committee representing his craft."

We contend that Rule 16 (b) was never intended to work a hardship on an employe who, through force of circumstances, as indicated by Exhibit A, was compelled to seek other employment during such temporary shut down.

Further, that a survey of the actual number of days worked each month during the year 1933 revealed that the shops did not average more than 3½ days a week.

We further contend that Missouri Pacific Railroad violated Rule 32 (a) of agreement in effect April 1, 1929, and up to and including current agreement November 1, 1934, in denying Carman Helper Martin investigation.

"**RULE 32 (a).** No employe shall be disciplined without a fair hearing by a designated officer of the railroad."

Exhibits B and C state that Helper Martin waived claim to compensation. We contend there is no record available to indicate any such understanding. (See Exhibit D.) Therefore, in accordance with Rule 32 (e) of agreement in effect April 1, 1929, up to and including November 1, 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 aforementioned amount.

CARRIER'S STATEMENT OF FACTS.—W. M. Martin employed as carman helper at North Little Rock, Arkansas shops. On December 16, 1933, he applied for and was granted a leave of absence from December 8, 1933, to January 2, 1934. December 20, 1933, the employing officer at Little Rock was notified by the local chairman of the carmen that Mr. Martin had accepted employment in the U. S. Mail Service in violation of Rule 16 (b) of our wage agreement reading:

"An employe absent on leave who engages in other employment will lose his seniority, unless special provisions shall have been made therefor by the proper official and committee representing his craft."

As no special provisions had been made, as required by the rule, Mr. Martin's name was removed from the employes' seniority roster upon his engaging in other employment while on a leave of absence, thus violating Rule 16 (b) of the agreement.

On March 15, 1934, Mr. Martin applied to the shop superintendent that he be restored to service with his former seniority rights, which request was granted.

POSITION OF CARRIER.—December 16, 1933, Mr. Martin applied to the foreman of the car shops at Little Rock for leave of absence for the purpose of "visiting", which leave was granted. (See carrier's Exhibit A.)

December 20, 1933, the local chairman of the carmen called the shop superintendent's attention to the fact that Mr. Martin while on a leave of absence had accepted employment with the U. S. Mail Service in violation of Rule 16 (b) of our wage agreement with the employes (quoted in 'carrier's statement of facts').

Upon receipt of the employes' advice, Mr. Martin's name was dropped from the seniority roster on December 21, 1933.

The shops at Little Rock, Arkansas, were reopened on January 8, 1934, and while the employes in presenting this case for compensation in favor of Mr. Martin for time held out of service January 8, 1934, to March 16, 1934, claim that he reported for duty on January 8, 1934, the carrier has no record of such a transaction; as a matter of fact, our records disclose no effort made by Mr. Martin or his representatives for the handling of his case pursuant to our wage rules until March 15, 1934, on which date Mr. Martin called upon the shop superintendent at Little Rock, and plead for reinstatement to service with his former seniority rights. The understanding reached at this conference is covered in shop superintendent's affidavit, and accompanying affidavit of his chief clerk who was present at the conference, identified in this case as carrier's Exhibits C and C-1, respectively.

Mr. Martin was restored to service effective March 15, 1934, following the conference with shop superintendent, with the distinct understanding that while his former seniority would be reinstated, he would not be compensated for any wage loss sustained, and no claim therefor was filed with the carrier until June, 1935, some year and three months following Mr. Martin's reinstatement.

FINDING.—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.

Carman Helper W. M. Martin did not protect himself, under the rules then in effect.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

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