

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Carman Emil Frederick for compensation equal to 163 days pay at carman's rate, 72 cents per hour, a net amount of \$710.00 for time lost due to being discharged, effective July 18, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Carman Frederick was discharged from service July 18, 1933, and reinstated March 1, 1934.

POSITION OF EMPLOYEES.—That Carman Frederick was discharged from service by Missouri Pacific Railroad account of affiliating with the B. R. C. of A. and not for cause as claimed by management, i. e., Carman Frederick was removed from service account of creating fire hazard.

That a brief history of the case, and also Exhibit A will clearly indicate the unusual procedure followed by management in that Carman Frederick had been assigned to cutting torch for two years and on June 23, 1933, being unable to remove cap from oxygen tank, he was advised by his foreman to get it off any way he could in order not to hold the work up. Carman Frederick heated cap with torch and removed it. Two days later the foreman questioned him about it and cautioned him not to resort to such practice in future and closed the incident. However, on July 18, 1933, 23 days later, he was subjected to investigation and discharged.

We contend that no hazard was created as air is not explosive until mixed with gas and that partial destruction to cap wasn't certainly material damage enough to discharge an employe after 20 years of loyal and efficient service.

We further contend that Carman Frederick did not return to service on a leniency basis of his own volition (see Exhibits B, C, and D) and that it is not a matter of record between Carman Frederick and management. 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.—Emil Frederick employed at Dupo, Illinois, October 8, 1922, to July 18, 1933. Dismissed from service following investigation afforded him by master mechanic at which he was represented by representatives of his choice, the local chairman and secretary of the carmen's organization at Dupo, for cutting cap off of oxygen cylinder with an acetylene torch June 23, 1933, destroying cap and creating hazard which might have resulted in serious injury to himself and others in that vicinity. His reinstatement on a leniency basis was authorized February 24, 1934, following exchange of correspondence and conferences with his representative, the general chairman of the carmen's organization. He resumed work March 2, 1934.

POSITION OF CARRIER.—Mr. Frederick entered service on the Missouri Pacific Railroad Company October 8, 1922. June 23, 1933, in removing cap from an oxygen cylinder he used an acetylene torch to cut it off, thus endangering the lives of himself and co-workers and damage to the company property, as, if the torch he was using had come in contact with the valve on this cylinder it would have caused an explosion. Mr. Frederick was charged with performing work in an unworkmanlike manner required of a mechanic, and willful destruction of company property. Mr. Frederick's performance was not called to the

attention of the master mechanic until the morning of July 18, 1933, whereupon Mr. Frederick was suspended from service and directed to report to the office of the master mechanic for formal investigation pursuant to our wage agreement rules with the shopmen (see carrier's Exhibit A).

Following investigation at which Mr. Frederick was represented by representatives of his choice, local chairman, and secretary of the carmen's craft, he was relieved from the service at 3:30 P. M. July 18, 1933.

Investigation afforded Mr. Frederick is marked carrier's Exhibit B.

Our wage agreement rules (carrier's Exhibit A) provide for the manner in which employes who believe they have been unjustly dealt with may prosecute their case to the highest official designated by the railroad for handling appeals.

On August 7, 1933, general chairman of the carmen's organization, appealed Mr. Frederick's case to the mechanical superintendent. (See carrier's Exhibit C-1.) Plea denied. Thence appealed to the chief mechanical officer, who also sustained the action of the master mechanic in dismissing Mr. Frederick, and denied the general chairman's appeal for Mr. Frederick's return to service.

October 24, 1933, the general chairman appealed the case to the assistant general manager (carrier's Exhibit C-2), the highest officer designated by the railroad for handling appeals.

Following the general chairman's appeal of October 24, 1933, several conferences were held, with the general chairman and in conference on February 20, 1934, the general chairman supplemented his plea of October 24, 1933, that Mr. Frederick be reinstated with his former seniority rights, without pay for time lost and on a leniency basis, his plea being based on Mr. Frederick's prior satisfactory period of service with the company that extended over a period of twenty-two years (Mr. Frederick was in our service February 2, 1911, to July 1, 1922, when he left the service on strike call with other shopmen—re-employed October 8, 1922). Following conference with the general chairman on February 20, 1934, he was advised on February 24, 1934, that his plea for Mr. Frederick's reinstatement on a leniency basis with seniority rights unimpaired, but without pay for time lost, was granted (see carrier's Exhibit C-3).

Although Mr. Frederick was returned to active service on March 2, 1934, under conditions outlined in the assistant general manager's letter to the general chairman dated February 24, 1934 (carrier's Exhibit C-3), on June 5, 1935, some fifteen months later, the general chairman filed claim with the master mechanic for \$710.00 alleged time lost by Mr. Frederick during period July 18, 1933, to March 1, 1934, contending that Mr. Frederick was dismissed for insufficient cause (see carrier's Exhibit D-1). (Rule 32 is identified in this case by carrier's Exhibit A.)

General chairman's claim was denied by the master mechanic and the case subsequently appealed to the chief mechanical officer and to the assistant general manager, each of whom sustained the action of the master mechanic (see carrier's Exhibits D-2 and D-3).

The employes, apparently, base their case on that part of Rule 32 reading as follows:

"(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."

There was no question of Mr. Frederick's guilt of the offense charged, nor has there been any question raised that he was not afforded an appropriate investigation under conditions required by our schedule rules. It is not unusual to favorably consider pleas made by employes and/or their representatives for reinstatement on leniency basis, as was done in this case, but in no instance where employes are relieved from service for justifiable cause are they reinstated and paid for the alleged time they may have lost. There is no basis under our schedule rules for the employes' contentions in this case.

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.
The evidence in this case does not support the petition of the employes for compensation for wage loss.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: **J. L. MINDLING**
Secretary

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