

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 Helper Paul Rotary, Jr., for compensation equal to one hundred thirty-two (132) days' pay at Carman Helpers' rate, 52¢ per hour, a net amount of \$549.12, for time lost due to being discharged, effective October 6, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Carman Helper Rotary, Jr., was discharged from service October 6, 1933, and reinstated February 16, 1934.

POSITION OF EMPLOYEES.—That Carman Helper Paul Rotary 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., Car Helper Rotary was removed from service account of violation of Rule No. 802—loafing and reading newspaper while on duty.

That the facts in the case clearly indicate that the foreman's charges were purely assumption, that the management failed to procure any witness to substantiate the charge of loafing, that Car Helper Rotary was not given a fair and impartial investigation and account of same he was subjected to duress. In support of same we submit for your consideration Exhibit A.

We further contend that it is not a matter of record that Car Helper Rotary waived claim for compensation, therefore, in accordance with Rule 32 (e) of Agreement April 1, 1929 and in effect up to and including current Agreement of November 1, 1934:—

“**RULE 32 (e).** If it is found that an employee has been unjustly suspended or dismissed from the service, such employee 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.—Mr. Rotary employed as carman helper at Lesperance Street Yard, St. Louis; entered service July, 1929; suspended from service October 6, 1933, afforded formal investigation October 7, 1933, at which he was represented by a representative of his choice, viz: local chairman, carmen's craft, and relieved October 9, 1933, account loafing and reading a newspaper while on duty in violation of transportation Rule 802, reading:

“All employees must devote themselves exclusively to the service, attending to their duties during prescribed hours, residing wherever required, and obeying promptly instructions of executive and general officers, and those of heads of departments, in matters pertaining to their respective branches of the service.”

January 5, 1934, the general chairman of the carmen's craft, appealed to the mechanical superintendent that leniency be extended to Mr. Rotary and that he be returned to service. The general chairman's request was granted and Mr. Rotary resumed duty February 16, 1934.

POSITION OF CARRIER.—Mr. Rotary entered service July, 1929; employed as a carman helper in our Lesperance Street Yard, St. Louis. At 4:20 p. m. October 6, 1934, the car foreman observed Mr. Rotary loafing in the airbrake room in Lesperance Street Yards at a time of the day that he should have been performing his routine duties in the yard. The foreman promptly suspended Mr. Rotary from service and pursuant to our wage agreement rules with the shop employees (carrier's Exhibit A) he was notified to report for formal investigation.

Investigation afforded on October 7, 1933, at which Mr. Rotary was represented by a representative of his choice, local chairman of the carmen's organization. Investigation identified in this case as carrier's Exhibit B.

Mr. Rotary admitted at the investigation that he was guilty of loafing while on duty in violation of the company's rules, and on October 9, 1933, he was formally notified that he was dismissed from the service account loafing and reading a newspaper while on duty in violation of carrier's transportation Rule 802 (rule quoted in carrier's "Statement of facts").

On January 5, 1934, the general chairman representing the car department employes appealed this case to the mechanical superintendent (carrier's Exhibit C).

There was no claim nor intimation of one in this appeal that Mr. Rotary had been unjustly suspended or dismissed, his plea being entirely one of leniency based on the financial circumstances of Mr. Rotary's family and that the general chairman personally felt that the loss of four months' work was sufficient penalty. The general chairman at this time did not contend that Mr. Rotary had been unjustly suspended or unjustly dismissed from the service, in fact, made no reference whatsoever to Rule 32 (e) (carrier's Exhibit A) in his appeal.

It might be here stated that it is not unusual for employes and/or their representatives to ask that leniency be extended to employes taken out of service for various causes, even in cases where there is no question of their guilt, as in this case, where the circumstances warrant, the employes' and/or the general chairman's appeals are favorably considered. In this instance Mr. Rotary's record was clear except for the charge that led up to his dismissal, and the general chairman's request was granted by the mechanical superintendent (See carrier's Exhibit C-1).

The Board's attention is specifically called to the general chairman's plea of January 5 and the mechanical superintendent's acknowledgment thereof February 13, the latter stating specifically that Mr. Rotary's return to service was on a leniency basis and carried with it restoration of his seniority rights, but that he would not be paid for any time he may have lost during the period he was out of our service.

Attention is also called to letter from the general chairman of the carmen's organization advising the mechanical superintendent of the discussion with Mr. Rotary (see carrier's Exhibit C-2).

Following mechanical superintendent's letter of February 13 to the general chairman, copy of which was furnished the master mechanic, Mr. Rotary on February 14, called upon the master mechanic, at which interview the car foreman was also present. Master mechanic's report February 16 to the mechanical superintendent (carrier's Exhibit C-3) and master mechanic's and car foreman's affidavits (marked carrier's Exhibits C-4 and C-5, respectively) set forth the discussion with Mr. Rotary on February 14, 1934, and the conditions under which Mr. Rotary was returned to service on the plea for leniency made in his behalf by the general chairman.

On June 6, 1935, a year and four months following Mr. Rotary's return to service, the general chairman asked that Mr. Rotary be compensated for the wage loss he sustained between October 6, 1933, and February 16, 1934, basing his claim (quoting from general chairman's letter to master mechanic dated June 6, 1935):

"A study of investigation given Car Helper Paul Rotary indicates he was removed from service for insufficient cause; I am, therefore, requesting that in accordance with Rule 32, Paragraph (e) of wage agreement, that Car Helper Paul Rotary be compensated for all time lost, amounting to \$549.12."

The general chairman's claim was declined by the master mechanic and his appeal to the chief mechanical officer and the assistant general manager has also been declined on the basis that Rule 32 (e) (see carrier's Exhibit A) has not been violated. There was no question whatsoever raised as to Mr. Rotary's guilt, neither can it be disputed that he was returned to service on a leniency basis and not on a merit basis.

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.

Paul Rotary was discharged for alleged loafing in airbrake room and investigation conducted does not prove that he was guilty of this offense.

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

AWARD

Paul Rotary 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.