

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 Car Inspector F. C. McMullen for compensation equal to 171 days and 4 hours pay at Freight Car Inspector's rate, 71¢ per hour, a net amount of \$791.71 for time lost due to being discharged, effective September 23, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Car Inspector F. C. McMullen was discharged from service September 23, 1933, and reinstated March 13, 1934.

POSITION OF EMPLOYEES.—That Car Inspector McMullen 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 Inspector McMullen was removed from service for violation of blue flag Rules 26 and 730.

We contend that Car Inspector McMullen did not violate blue flag Rules 26 and 730; that he was working under orders from his car foreman, and that the facts hereinafter set forth clearly justify our position, as well as being borne out by investigation Exhibit A.

On September 23, 1933, Car Inspector McMullen and the car foreman, made a joint inspection of 18 cars located on storage track No. 9 in Monroe yards. This joint inspection developed a brake shoe missing on PGX 1664; McMullen applied new brake shoe in presence of the foreman. Proceeding further down the track, the foreman called McMullen's attention to missing carrier iron bolt on PGX 1662; the latter felt it wasn't necessary to replace the bolt, as the car was to be switched over to the I. C., but the foreman instructed him to replace the missing bolt which he did in his presence.

NOTE.—At this particular point, the foreman left and McMullen continued with his regular duties. However, 30 minutes later the car foreman returned and notified Inspector McMullen that he was discharged account of not having track No. 9 protected by blue flag.

NOTE.—McMullen replied it was not necessary to use blue flag, that switch on north end was thrown for rip track, making it impossible for cars to be switched in on him and further, the two repairs he made, as aforementioned, were performed in the presence of the Car Foreman, making it doubly safe.

We contend that for years prior to discharge of Car Inspector McMullen, inspectors did not observe blue flag rules and that this practice was well known by the local supervision. In support of same, see marked Exhibits B, C, D and E.

We further contend that Missouri Pacific Railroad discharged Car Inspector McMullen account of his activities in organizing the B. R. C. of A. and in support of this statement, we submit Exhibits F and G.

Exhibit H, I and J make reference to Car Inspector McMullen returning to service on a leniency basis. We contend that such an understanding is not a matter of record, therefore, in accordance with Rule 32 (e) of agreement April 1, 1929, in effect up to and including current agreement 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 amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—F. C. McMullen, Car Inspector, Monroe, La., dismissed from the service following investigation afforded him by master mechanic on September 28, 1933, at which he was represented by a representative of his choice, for violation of transportation rule 26, reading:

time he was out of service from September 23, 1933, to March 13, 1934, basing his contention (quoting from the general chairman's letter, June 5, 1935) :

"A study of investigation given Car Inspector F. C. McMullen indicates he was removed from service for insufficient cause; I am, therefore, requesting that in accordance with Rule 32, Paragraph (e) of current wage agreement Car Inspector F. C. McMullen be compensated for all time lost, amounting to \$791.71."

Rule 32, Paragraph (e) of our wage agreement then in effect with the mechanical employees reads :

"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 violation of this rule as Mr. McMullen was found guilty of the charges preferred against him and his return to service was not because he had been unjustly suspended or dismissed from the service, but he was reinstated on a leniency basis (see carrier's Exhibit C). The general chairman's claim was denied and his appeals from the master mechanic to the higher officers of the carrier have all been 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 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.

It is not disputed that Carman McMullen failed to protect himself with a blue flag, as prescribed in the safety rules.

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.