

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Coppersmith C. A. Garner for compensation equal to 30 days or 240 hours, as a Sheet Metal Worker, rate of 81¢ per hour less 10%, total amount of claim \$174.96.

EMPLOYEES' STATEMENT OF FACTS.—Mr. Charles A. Garner was discharged November 9, 1933, and reinstated December 22, 1933.

POSITION OF EMPLOYEES.—We contend that Mr. Charles A. Garner was discharged for attending a meeting held for the purpose of organizing a local union of sheet metal workers affiliated with the Sheet Metal Workers' International Association and for the interest he manifested in the formation of such a union, and not for the cause alleged by the railroad company, and that he is entitled to compensation for time lost as a result of such discharge, as indicated by the exhibits.

Mr. Garner on the night of November 6, 1933, attended a meeting at the home of Mr. Hugh B. Thornton and signified his intention of affiliating with the sheet metal workers' union and he felt secure in doing so as he had read a notice posted on the bulletin board signed by officials of the Missouri Pacific Railroad, said notice having been posted in compliance with the Federal law which guaranteed to the men the right to affiliate with the organization of their choice without fear of intimidation or coercion.

Subsequent developments show that the then general chairman of the Mechanical Department Association (sheet metal workers), appeared on the scene immediately following this meeting, and then followed a series of acts of coercion and a concerted effort to intimidate the men by threats and actual discharge. Mr. Garner was one of the victims and the alleged reason for his dismissal was the very flimsy one of supposedly telling his foreman that a strainer had been cleaned and applied, while an investigation showed the strainer was missing. Mr. Garner claims, and it is not denied, that he instructed his apprentice to do the work in question, which is a common practice, and he naturally assumed when asked about it by his foreman that the apprentice had done the job. There is no evidence that he wilfully lied to his foreman or of gross carelessness and there was no train delay or very much time lost in correcting the mistake. It was an exceedingly minor thing, the like of which happens every day without as much as a serious reprimand. On its very fact it indicates another motive, and that motive is revealed in the evidence which we are presenting. The plan of intimidation, coercion, and the then general chairman's part in it unfolds itself in sequence. He first warned what would happen unless the idea of forming a sheet metal workers' union was abandoned. This failing of immediate results, men were fired on the most flimsy pretext, which clearly demonstrated to all concerned the power to make good the threats.

The next step was for the general chairman to prove conclusively the power of the company union to undo the harm if the offender paid up his dues and renounced the "new union." Mr. Garner, agreeing to these terms, was again in good graces and the general chairman took his case to the proper officials and Mr. Garner was reinstated, but Mr. Garner was unjustly discharged and is entitled to compensation as above mentioned in compliance with Rule 32 (e) of agreement in effect as of 1929 and up to the present time:

"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 unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

dismissed for cause following an investigation afforded him as provided for in the wage rules, and his subsequent return to service was on a leniency basis and with a distinct understanding, with not only Mr. Garner, but with his representatives, that his reinstatement carried with it restoration of his former seniority rights, but that he would not be paid for any time he may have lost while out of service.

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.

Based on the record in this case, Coppersmith C. A. Garner was restored to service December 21, 1933, the result of an understanding reached between the general chairman of the sheet metal workers and the chief mechanical officer of the carrier on December 15, 1933, substantially a month prior to the "Special notice issued by the Trustees in Bankruptcy."

AWARD

Claim of employes 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.