

Award No. 180
Docket No. 173
2-MP-MA-'37

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Class B Machinist E. H. Hobby, North Little Rock, Arkansas, be reinstated with seniority rights unimpaired, compensated for all time lost, and personal record cleared of all documents relating to case.

EMPLOYEES' STATEMENT OF FACTS: On February 1 about 2:00 P. M., E. H. Hobby, Class B Machinist, North Little Rock, Arkansas, was removed from service on charge of being intoxicated and disorderly conduct at Union Station in Little Rock, Arkansas, about 10:00 P. M. on January 28, 1937.

POSITION OF EMPLOYEES: Mr. Hobby's hours of service are from 7:30 A. M. to 4:30 P. M. The violation as charged by the company was committed at 10:00 P. M. It is our contention that there are no rules governing personal conduct of shop employes when off duty. We also contend that when a man enters the service of the Missouri Pacific Railroad Company he agrees to furnish a stipulated number of hours service per day for a stipulated rate of pay, but does not agree to become subservient to the railroad company during off-duty hours. We also contend that so long as an employe is in suitable mental and physical conditions to properly perform his usually assigned duties during his regular assigned hours, that the railroad company has no authority whatever to dictate or control his personal conduct during off-duty hours.

We further contend that Mr. Hobby was not intoxicated or disorderly to the point claimed by management and to substantiate this claim we respectfully refer you to Exhibit A, affidavit of Mr. E. H. Hobby. This affidavit would indicate that Mr. Hobby was in full possession of his mental faculties at time management contended that he was intoxicated and disorderly; Exhibits B, C, D, F and G will substantiate this statement.

In view of the established facts we contend that under 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."

Mr. Hobby has been unjustly dealt with and are requesting his reinstatement and other considerations as set forth in previous paragraphs of this claim.

CARRIER'S STATEMENT OF FACTS: On January 28, 1937, about 10:00 P. M., Mr. Hobby called at the ticket window in our Little Rock Union Depot ticket office, and made inquiry of the ticket clerk on duty as to trains arriving from Marked Tree, Arkansas. Mr. Hobby created a disturbance and interfered with carrier's passengers by his conduct, as set forth in statement from the ticket clerk, Lee Sturdivant (Carrier's Exhibit No. 1) and supporting statements of Geo. H. Tscheime, ticket clerk (Carrier's Exhibit No. 1-A); J. H. Miller, depot passenger agent (Carrier's Exhibit No. 1-B); and C. D. Wallace, Pullman conductor (Carrier's Exhibit No. 1-C).

Mr. Hobby's condition and conduct in the carrier's passenger station prompted the calling of police officers (see Carrier's Exhibit No. 2, statement from Ed Monroe, assistant chief special agent, Little Rock, Arkansas). The city police department officers, Messrs. Ward and Stone, arrested Mr. Hobby and he was subsequently charged by the city authorities with being drunk, and fined \$10.00 (see Carrier's Exhibit No. 2-A).

February 1, 1937, Mr. Hobby was suspended from service.

POSITION OF CARRIER: In the handling of this case with the carrier the employe's representatives have taken the position that in the absence of a rule in the agreement covering rates of pay and working conditions of employes in the mechanical department, that there is no rule in the agreement governing rates of pay and working conditions of employes in the mechanical department that governs "personal conduct of shop employes when off duty." They also contend that when a man enters the service he agrees to furnish a stipulated number of hours of service per day for a stipulated rate of pay and that the carrier has no authority whatever to dictate or to determine personal conduct of the employes when they are off duty. To a certain degree the employe's representatives' contentions are correct, in that we do not attempt in any manner whatsoever to dictate to an employe what his personal conduct is after he is off duty, but when his conduct on the employer's premises, whether it be on or off duty, is inimical to the interest of the employer, interferes with the business of furnishing transportation facilities to patrons, it then becomes a matter in which the carrier is interested and that is just exactly what was done in this case. Before, however, assessing any discipline rule of the agreement with the employes governing rates of pay, etc., comes into play, and in this case these rules provide a procedure for conducting investigations prior to the application of discipline. These rules were followed in their entirety and as herein stated the employes appealed their case through the channels provided therefor to higher officers who, upon review of the evidence, sustained the action of the shop superintendent in dismissing Mr. Hobby from service, the evidence in the management's opinion showing conclusively and without any mitigating circumstances that Hobby was drunk and disorderly in its passenger station in the city of Little Rock, Arkansas, and that while in this condition he conducted himself in a manner prejudicial to the interest of his employer.

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 record is lengthy with charges and counter-charges which could serve no useful purpose to herein quote or discuss.

While Machinist Hobby's conduct was such as to merit discipline, sufficient extenuating circumstances were disclosed to justify the opinion of this Division of the Adjustment Board that Hobby should be reinstated without compensation.

AWARD

Machinist Hobby shall be reinstated with seniority rights unimpaired but without payment for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1937.