

Award No. 993

Docket No. 907

2-MP-MA-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier at Coffeyville, Kansas, under the controlling agreement, discriminated against and unjustifiably dealt with Machinist Local Chairman H. E. Groves, when on—

- (a) August 29, 1942, he was suspended from the service, and
- (b) September 11, 1942, he was discharged from the service.

2. That the carrier be ordered to restore to service Machinist H. E. Groves with seniority unimpaired and compensated for all time lost retroactive to 8:30 A. M., August 29, 1942.

EMPLOYEES' STATEMENT OF FACTS: At Coffeyville, Kansas the carrier maintains a roundhouse and a small machine shop adjacent thereto.

There is a regular force maintained in the machine shop during the hours of 7:00 A. M. to 4:00 P. M., with a lunch period of one hour. This force consists of two regularly assigned machinists, one regularly assigned utility man who only devotes part of his time to machine work, one apprentice the majority of the time and one machinist helper who operates the drill press and a bolt threading machine.

In the roundhouse there are maintained—

- 1—Three shifts of machinist inspectors, one on each shift, and their duties are exclusively confined to the inspection of locomotives.
- 2—Two shifts of machinists. The hours of the first shift are from 7:00 A. M. to 4:00 P. M. with a lunch period of one hour, and the night shift hours are from 7:00 P. M. to 4:00 A. M. with a lunch period of one hour.
- 3—The regularly assigned running repair force on the first shift consists of five machinists.
- 4—The regularly assigned dead work force on the first shift consists of five machinists.

The carrier feels the request of the claimants, that Mr. Groves be restored to service with seniority unimpaired and compensated for all time lost retroactive to 8:30 A. M., August 29, 1942, should be denied.

It further requests that if, notwithstanding its position as heretofore expressed, your Honorable Board finds in favor of the plaintiff that any award that may require the payment of monies petitioned for by the claimant that due consideration be given to monies earned by Mr. Groves in other employment since August 29, 1942.

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.

Machinist Groves was suspended from the service August 29, 1942, and after an investigation was dismissed from the service September 11, 1942, because of insubordination.

The evidence of record clearly supports the charge of insubordination, and it as clearly supports the conclusion that disciplinary action by the carrier was justified.

There is reason to believe, however, that in the circumstances of this case the extreme penalty of dismissal, with loss of seniority rights, constituted an abuse of discretion on the part of the carrier, when imposed upon an employe of about twenty years' standing who, as far as the record shows, had not previously been charged with any similar offense.

While it is sound doctrine that the Division should not substitute its judgment for that of the management in disciplinary matters, it is essential that employes be protected against abuse of discretion. Such abuse of discretion may be reflected in the measure of discipline applied, in relation to the offense involved, as well as in the grounds upon which discipline is based.

In this proceeding the Division is of the opinion that the penalty imposed upon the claimant employe was excessive; that the disciplinary authority of the carrier will be amply sustained even though the penalty is modified, as had previously been done by the Division in many instances without the aid of a referee; and that a just result requires that Machinist Groves be restored to service, with seniority rights unimpaired, but without compensation for lost time.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.