

**Award No. 1214**

**Docket No. 1150**

**2-MP-MA-'47**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

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**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Machinist Helper L. Lavender was unjustly dismissed from the service under the current collective agreement, and that accordingly the carrier be ordered to reinstate him to all service rights with pay for all time lost as result of said dismissal beginning with 3 P. M. March 11, 1946.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist Helper L. Lavender, hereafter referred to as the claimant, was regularly employed by the carrier on the 3 P. M. shift in the roundhouse at Dupo, Illinois, with a seniority date as such of 9-12-44.

The claimant was summoned to a hearing at 1 P. M. March 11, 1946, "charged with failure to report for his regular shift at 3 P. M., March 9, 1946," and the submitted copy of said hearing record is identified as Exhibit 1.

The collective agreement effective July 1, 1936, as subsequently amended is controlling.

**POSITION OF EMPLOYEES:** It is submitted that the carrier violated provisions of rules of the controlling agreement, particularly Rule 32 (c) and (d), reading—

"(c) At a reasonable time prior to the hearing such employe will be apprised of the precise charge against him.

(d) The employe shall have reasonable opportunity to secure the presence of necessary witnesses, and if he desires representation, said representation shall be by the duly authorized Local Committee or their representative."

Wherein the claimant was not properly notified under provisions of Rule 32 (c) herewith quoted. Refer to page 1 of employes' Exhibit No. 1, quoting question by Master Mechanic Losch:

"Mr. Lavender, after hearing the above caption read do you understand the purpose of this investigation?"

tends that Mr. Lavender was not unjustly dismissed from service, nor was he dismissed in violation of any part of the collective bargaining agreement under which he was working.

**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 is conflicting evidence in this case. The carrier does not prove that Lavender was not sick and the employes do not prove that he was sick. In view of the whole record and the circumstances cited in the record—the fact that Lavender had been previously cautioned about laying off without permission and then not literally following instructions, it must be found that he was unjustly dismissed but cannot be held blameless to some degree.

#### AWARD

Claim sustained as to reinstatement and service rights and disallowed as to compensation or pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.