

Award No. 1427

Docket No. 1353

2-MP-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under the current agreement Carman E. P. Behr, North Little Rock shops, was unjustly suspended from service on May 24, 1949 and unjustly discharged from service July 11, 1949.

(b) In consideration of the foregoing, Carman E. P. Behr is entitled to be reinstated to service with seniority rights unimpaired and compensated for any wage loss.

EMPLOYEES' STATEMENT OF FACTS: Carman E. P. Behr and hereinafter referred to as the claimant, has had many years of service with Missouri Pacific—he completed his apprenticeship back in the early twenties with his employment thereafter somewhat intermittent, his last reemployment date as carman being May 25, 1944. On May 2, 1949 he was laid off in force reduction, effective 4 P. M.

On May 24, 1949 he was suspended from service pending investigation on charges of removing without permission from company premises eight 2 1/4" x 8' and four 2" x 6' 4" boiler tubes at about 8:30 P. M. May 2nd. On July 9 he was given formal investigation, and on July 11 was discharged from service.

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

POSITION OF EMPLOYEES: That the evidence of record clearly indicates that no proof has been adduced to support the charges that claimant removed or was in possession of boiler tubes the night of May 2, 1949 and this appears to be affirmed by the following questions and answers directed to Special Officer Parrymore by Local Chairman Lyons (see employees' Exhibit A—Page 13—submitted herewith):

"Mr. Lyons: Did you see Mr. Behr loading the flues into his truck?

Mr. Parrymore: No.

This claim should, therefore, be denied as being entirely without merit under the rules, custom and practice on this railroad, as well as other railroads throughout the industry, and without merit as a matter of equity.

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 Division finds no grounds for disturbing the discipline administered.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary.

Dated at Chicago, Illinois, this 22nd day of March, 1951.