

Award No. 1572

Docket No. 1525

2-MP-MA-'52

**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: (a) That under provisions of controlling agreement, particularly Rules 1, 31 and 32 thereof, Machinist Frank Argus, was date of December 29, 1951, unjustly suspended from service pending formal investigation.

(b) That under provisions of Rule 1, 31 and 32 the carrier was not authorized to dismiss Machinist Argus from service date of January 5, 1952.

(c) That accordingly carrier be ordered to reinstate this employe with all seniority rights unimpaired, with pay for all time lost retroactive to December 29, 1951.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, the carrier first employed as machinist apprentice, and following completion of a four year apprenticeship, re-employed as machinist, Mr. Frank Argus, hereinafter referred to as the claimant. Regular assigned working hours of claimant were 12 Midnight to 8:00 A. M.—five days per week.

The carrier did by method of an undated written charge suspend the claimant from service. The claimant was by the same undated notice instructed to report at office of master mechanic date of January 2, 1952, hour of 9:00 A. M. for formal investigation for being asleep on engine 9103, approximately 1:15 A. M., December 21, 1951 and for violation of Rule 1, paragraph (a) date of December 29, 1951.

These developments are affirmed by copy of undated letter addressed by Mr. Daniel, asst. master mechanic to the claimant, copy submitted herewith and respectfully identified as employes' Exhibit A.

The investigation of the claimant was conducted January 2, 1952, and a copy thereof consisting of nine pages is submitted herewith and identified as employes' Exhibit B.

Date of January 5, 1952, carrier made the election to dismiss the claimant from service as follows:

Clerks case, 281 U.S. 548, 50 S. Ct. 427, 74 L.Ed. 1034. We believe the carrier has the right to discipline its employees."

The Third Division in Award 5006 with the assistance of Referee Thomas C. Begley said:

"... all inherent rights of management that the Carrier has not contracted away, remain with it."

This carrier has not contracted away its right to discipline its employees. There can be no doubt that the carrier has the right to administer discipline as severe as dismissal or discharge under the facts present here. Therefore part (b) of the claim must be denied.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties to this dispute on the property except that part relating to the wording of part (b) of the claim.

This claim should, therefore, be denied as being entirely without merit and without support under the effective agreement between the parties hereto and without merit even 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 employee or employees involved in this dispute are respectively carrier and employee 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.

After reviewing the record in this case the Division is of the opinion that Machinist Frank Argus should be reinstated with seniority rights unimpaired but without pay for time lost.

AWARD

Machinist Frank Argus shall be reinstated with seniority rights unimpaired. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1952.