

Award No. 1666

Docket No. 1570

2-MP-MA-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter 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: (a). That under provisions of controlling agreement, particularly Rule 32 (b) thereof, Machinist Charles C. Babbs was date of February 29, 1952 unjustly suspended from service pending a formal investigation.

(b). That under provisions of Rules 31 and 32 of Controlling Agreement, Carrier was not authorized to dismiss Machinist Babbs from service, date of March 25, 1952.

(c). That accordingly Carrier be ordered to reinstate this employe with all seniority rights unimpaired, with pay for all time lost retroactive to February 29, 1952.

EMPLOYEES' STATEMENT OF FACTS: At Dupou, Illinois, the carrier employed as machinist, Charles C. Babbs, hereinafter referred to as claimant. Regular assigned service hours of claimant were 7:00 A. M. to 3:00 P. M. — five days per week.

Claimant had been in the service of the carrier as machinist for a period in excess of six years.

Carrier suspended this claimant from service date of February 29, 1952, pending formal investigation on charge of absenting himself from duty as machinist date of February 29, 1952, without permission from the foreman. (Copy of notice to appear for investigation not available).

Investigation of the claimant was conducted March 6, 1952, copy of transcript consisting of 10 pages submitted herewith and identified as employes' Exhibit B.

Date of March 25, 1952, carrier elected to dismiss the claimant from service. This fact is affirmed by letter over signature of Superintendent Jones addressed to claimant, copy submitted herewith and identified as employes' Exhibit A.

POSITION OF EMPLOYEES: (1) That the carrier was not authorized by rules of controlling agreement to suspend the claimant from service pending

must follow if it wishes to exercise that right. The carrier has pointed out that that procedure was carefully followed in this case. Part (b) of the claim does not state any grounds on which the claim for reinstatement can be sustained.

It follows that this claim is entirely without merit or support under the effective agreement.

There is no reason for reinstating claimant. This claim must be denied.

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.

Claimant was employed as a machinist at Dupou, Illinois. On February 29, 1952, he is alleged to have absented himself from duty without the permission of his foreman. An investigation was given the claimant on March 6, 1952. On March 25, 1952, claimant was found guilty of the offense and dismissed from service. Claimant contends that this was in violation of agreement rules and asks that the carrier be ordered to reinstate him with seniority rights unimpaired, with pay for all time lost.

We find no contract violation in the manner in which the investigation was conducted. It is urged that carrier violated the agreement in failing to render its decision with promptness. The agreement contains no prescribed time in which the carrier must act. In addition, it appears that the organization made some contribution to the delay. There was no contract violation on this point.

On the merits of the case, the record shows that claimant reported for work at 7:00 A. M. on February 29, 1952. He was working an assignment which did not require daily instructions by the foreman. About 9:30 A. M., the foreman began looking for claimant to have him perform some special work. The foreman says he was unable to locate him until noon when he was advised by the local chairman where claimant was and that he was in no condition to work. The local chairman went to claimant, obtained his time card, changed the time claimed from eight to three hours, and turned it over to the foreman. At 2:00 P. M. claimant came into the locker room to change to his street clothes at which time he was confronted concerning his whereabouts during his assigned tour of duty. He admitted that he did not obtain permission from his foreman to leave, claiming that he could not locate him. The record shows, however, that not only the foreman but several other employes as well, were searching for him during this period. The evidence is ample to sustain the charge that the claimant deserted his work without permission.

It is urged that the punishment assessed was excessive. Claimant had worked for this carrier about six years, being first employed on February 13, 1943. In July, 1947, he refused to carry out his assignment and was permitted to return to work only after he agreed in writing to abide by all shop rules and give the carrier eight hours service for eight hours pay. In October 1947, he was suspended from service for rules violation, but was later returned to service. On January 22, 1951, he was again called to the office of the general foreman concerning his conduct where he again signed in writing that he would comply with company rules in the future.

Under these circumstances, we are required to say that he is not entitled to have the seriousness of his offense mitigated because of long and faithful service, nor because of a good record in the past. His record indicates an indifference to rule responsibility after several opportunities have been afforded him to correct his attitude. Under such circumstances, we cannot say that the carrier acted arbitrarily or unreasonably in dismissing him from the service.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1953.