

Award No. 3548

Docket No. 3461

2-MP-FO-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when award was rendered.

PARTIES TO DISPUTE.

**SYSTEM FEDERATION NO. 2 RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

MISSOURI PACIFIC RR COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1) That under the current agreement, Laborer Mrs. Mistearia Johnson was unjustly dismissed from the services of the Carrier on August 9, 1958, Kansas City, Missouri Shops.

2) That accordingly she is entitled to be reinstated to her former seniority rights with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Laborer Mrs. Mistearia Johnson, hereinafter referred to as the claimant, was employed as such by the carrier on October 5, 1943 with a continuous seniority dating therefrom. Her regular assigned hours, prior to her dismissal, were from 8 A.M. to 4 P.M. Monday through Friday, with rest days Saturday and Sunday.

The claimant was summoned to report for an investigation on July 29, 1958 to develop the facts, and place responsibility for her failure to respond to directive in performing her duties, given by General Foreman H. R. Burge, between the hours of 1:00 P.M. and 4:00 P.M. on July 15, 1958. The hearing was held as scheduled and submitted herewith and identified as Exhibit A is a copy of hearing transcript.

On August 9, 1958, Mr. E. H. Campbell, superintendent, notified the claimant that effective at once she was dismissed from the service of the Missouri Pacific Railroad account failure to satisfactorily perform duties assigned by Foreman H. R. Burge, leaving assignment without permission and creating safety hazard in leaving mop in passageway of diesel shop.

This dispute has been handled with proper carrier officers in accordance with Rule 9 of the controlling agreement, with the result that the highest designated officer has declined to settle it.

The agreement of September 1, 1949 and subsequently amended, is controlling.

The carrier respectfully submits that your Board has no alternative but to deny the claim.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was instructed to mop up the mud left by a flood in a diesel unit. She had been treated by an association doctor apparently for bursitis and just returned to work that day. She complained that she could not use the mop account of a bad arm but undertook the work saying that she would do it but someone would pay for her arm. Some twenty minutes later, without substantial performance of the task she threw down the bucket and mop and returned to her former task of sweeping with a push broom in the electric shop. She stopped to tell her troubles to the locomotive foreman. She had tears in her eyes and her voice trembled so he could not understand what she was saying. When her foreman found her back at her sweeping she said she could not do the mopping because of her arm and he instructed her to put the mop away and then "that she could go see the doctor and he would have to inform me that she was unable to do this kind of work." She accused him of picking on her and made out a report stating that she had sprained her shoulder in mopping and blaming the general foreman who had instructed her to do it. Then she went to the doctor. She was not asked to furnish a report from the doctor; rather the doctor was to "inform" her foreman. Claimant could not know what he was informed and her foreman has failed to state it in the record.

In substance the charge against claimant was that of insubordination in her failure to respond to directive in performing her duties. We find no substantial evidence that she refused or intentionally failed to mop the diesel. She did fail in her duty to put away the mop and created a hazard thereby; fail in her duty to report when she left the work undone, and fail in her belligerent attitude in connection with her duties. These justified discipline but we think not to the extent of dismissal from service. Carrier urges claimant's bad record but we may consider only matters set out in the submissions before us.

AWARD

Claim for reinstatement with full seniority rights sustained, but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1960.