

Award No. 3700

Docket No. 3134

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That R. E. Cook, Truckman-Oiler, was unjustly dismissed from the service of the Missouri Pacific Railroad Company on July 8, 1957, and returned to service on August 3, 1957 without compensation for time lost.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Truckman-Oiler R. E. Cook for all time lost between July 8th and August 3rd, 1957 at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: Mr. R. E. Cook, hereinafter referred to as the claimant, was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, on November 28, 1922 as a truckman-oiler. The claimant has remained in the service of the carrier as a truckman-oiler with 36 years of faithful service.

On June 27, 1957, the claimant was cited for investigation, as set out in Master Mechanic Martin's letter to the claimant and herewith submitted as employees' Exhibit A, for alleged failure to perform his duties and falsifying his work on June 4, 1957. Investigation was held on July 3, 1957 and the employees herewith submit the transcript of this investigation as Exhibit B. Following the investigation hearing, the claimant was dismissed from service on July 8, 1957, following which the claimant filed his case with the committee and the case was referred to General Chairman W. H. Bond who handled it with Superintendent Austin who declined to reinstate the claimant. However, in direct defiance of the agreement and ignoring the general chairman, the carrier returned the claimant to service on August 3, 1957, but did not compensate him for time lost between July 8 and August 3, 1957, which constitutes the basis of the claim before your Honorable Board.

We next come then to the question of amount of discipline which might properly be assessed. In this connection, we note that the employes exhibit a great interest in expediting freight trains through the Osawatomie Yard. The carrier, of course, wishes all freight trains to be expedited to the fullest extent possible, but the carrier also realizes through costly experiences that the time and money spent on insuring that all journal boxes are properly service treated is time and money well spent. The professed interest in expediting freight trains in this case is nothing more than an excuse for failure to follow instructions.

The inspection on the afternoon of June 4 revealed that claimant was not following instructions. This fact is not diminished by an indication in the record that the instructions had not always been followed at Osawatomie by other car oilers and carmen in the past. The responsible supervision did not see fit to assess other discipline. If other employes did, in fact, fail to follow the instructions, they, perhaps, should consider themselves fortunate in escaping any censorship. In any event, the action taken by supervision apparently accomplished the purpose intended which was to insure that journal boxes be properly treated since this office has not heard of any further difficulty. The loss of earnings by claimant for approximately a month is not severe punishment, particularly when we consider the fact that he undoubtedly received unemployment compensation during that period. Furthermore, as brought out in the investigation, claimant's work had not always been satisfactory, and it had been necessary to call him into the office on a prior occasion in connection therewith. Certainly it was not only proper but a duty of the officers to do something to correct the unsatisfactory condition found at Osawatomie. What should have been done? Fire everybody? Cut off all the jobs for the reason the work was apparently not being performed properly anyway? The supervisors found one employe who was not following instructions. He properly was subject to discipline for failure to perform his work properly. Supervision in its judgment determined that disciplining the one employe uncovered by the inspection was sufficient to correct the condition at Osawatomie.

The judgment exercised by management in this case was reasonable and not in violation of any provision of the agreement. It follows that this claim is not supported by the agreement and is entirely lacking in merit and 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.

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

The record discloses that Claimant was afforded a fair and impartial hearing: the evidence sustained the charge against him, and the penalty imposed was not excessive.

We find no persuasive reason for disturbing the Carrier's judgment in this case.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 6th day of March 1961.