

Award No. 4658

Docket No. 4664

2-MP-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the provisions of the controlling agreement, the Missouri Pacific Railroad Company unjustly dismissed Telephone Maintainer R. I. Clark from the service beginning July 12, 1963.

2. That accordingly, the Missouri Pacific Railroad Company reinstate Telephone Maintainer R. I. Clark to service with seniority rights unimpaired and paid for all wages lost from July 12, 1963, including vacation rights, any earned vacations and fringe benefits, including hospitalization, insurance dependent benefits, and any other benefit (monetary) that flows to any other employe in active service during the period that Telephone Maintainer Clark is out of service.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. I. Clark, hereinafter referred to as the claimant, has been employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, in the capacity of telephone maintainer at St. Louis, Missouri since 1957. The claimant had work week of Tuesday through Saturday, assigned hours 3:30 P. M. to 11:30 P. M., rest days Sunday and Monday. From the time of his employment with the carrier in 1957 to the time he was cited for investigation, the claimant had a clear record with the carrier.

Under date of July 9, 1963, the claimant received the following communication from Mr. M. G. Jackson, assistant superintendent, citing him for investigation at 9:30 A. M., Friday, July 12, 1963:

"St. Louis, Mo., July 9, 1963

Mr. R. I. Clark, Telephone Maintainer
c/o Radio Shop—3001 Chouteau Ave.,
St. Louis, Missouri

Arrange to report to the Assembly Room, 3001 Chouteau Ave.,
St. Louis, Missouri, at 9:30 A. M. (C. S. T.), Friday, July 12th, 1963

the reinstatement of the claimant with pay for time lost must be denied and there is no basis for your board to overturn the discipline assessed.

Although the claim must be denied in its entirety for the reasons fully set forth herein, we point out that in any event the claim set forth in paragraph 2 of the employes' statement of claim is too broad and goes beyond the authority of your board to grant because it contains a plea for fringe benefits, including hospitalization, insurance dependent benefits, etc., which cannot be embraced within paragraph (d) of Rule 32, which provides that

“If it is found that the charges against the employe are not sustained, * * * *, shall be compensated for the wage loss, if any suffered.”

The phrase “wage loss, if any,” is limited to the wages the individual employe would have earned but for his discharge, less earnings from all sources during the period involved, and said rule has been so interpreted by the Carrier and the Employes.

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 Claimant was performing vacation relief at St. Louis for another monthly paid telephone maintainer with regular hours 7:30 A. M. to 3:30 P. M., five days per week, Monday through Friday, with Saturday as standby day and Sunday off. He worked Tuesday, Wednesday and Thursday, June 25, 26 and 27, 1963; but failed to report for work on Friday, June 28. He telephoned from Kansas City at 10:00 that morning that he would report to work on Tuesday, July 2, which he did.

The record shows that Claimant neither obtained permission to lay off, nor informed Carrier of sickness or other good cause for his absence, as required by Rule 17.

At the investigation he said: “I deemed that the nature of my absence from duty, the cause of which was personal, to the extent that I didn't feel that I could ask permission to be absent presenting that excuse”. He said that his reason for absence concerned his children's welfare, but refused to explain; among other things his statements at the hearing and over the telephone involved references to a breach of confidence, narcotics, the police, the F.B.I. and a telephone conversation of his which he suspected had been overheard; at the hearing he asked the Chief Clerk of Communications whether he had knowledge of Claimant's movements during the days in question, whether he had any reason to suspect the mishandling of parts from the radio shop, and whether the Chief Clerk's appearance as a witness was directed “entirely to matters pertaining to my absence from duty without regard to company material or property”.

If Claimant had a legitimate excuse for his absence he obviously did not think so, and refused to state what it was. Certainly the Carrier was not unreasonable in concluding that he had none and also that he was not a trustworthy employe.

AWARD

Claim denied.

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

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.