

NATIONAL RAILROAD ADJUSTMENT BOARD

Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

UNION PACIFIC RAILROAD COMPANY—NORTHWESTERN
DISTRICT

DISPUTE: CLAIM OF EMPLOYEES.—Request that Charles Murray, car inspector, Huntington, Oregon, be compensated for all time lost from August 14, 1933, to October 13, 1933, inclusive, and from January 5, 1934, and January 7 to April 4, 1934, inclusive, due to suspension from service.

POSITION OF EMPLOYEES.—Car Inspector Charles Murray, Huntington, Oregon, was removed from service August 14, 1933, account of screw working out of running board of U. P. 19625 on August 11, causing personal injury to a brakeman at Tekoa, Washington, about four hundred (400) miles from Huntington. This car had been inspected by Mr. Murray on July 15. July 19, it was inspected by other parties on Mr. Murray's day off. On July 23, the car arrived in Rieth and was marked bad order for mechanical defect and placed on the coach track for heavy repairs. July 24, the car switched to wash track and commodity carded for "sack grain" on July 25, 1933. It departed for the west on July 26. Mr. Murray was held out of service from August 14, until October 13, 1933, inclusive.

On January 5, 1934, Mr. Murray was taken out of service for overlooking a missing cotter key from the bottom rod key bolt on car O. S. L. 18287. He was exonerated, reinstated on the 6th, and removed again on the 7th without an investigation.

For the illegal removal from service, claim was made to the amount of \$235.97, which superintendent of MP&M agreed to pay. In a conference held on October 30, 1935, general chairman recommended the acceptance of this claim and closed out the case. In November general chairman had a further conference in the superintendent's car in Huntington. Enclosed in the file is a copy of exhibit letter of November 25, in which Mr. Murray refused acceptance of the \$235.97. Therefore, as per request of employe, same is turned over to the adjustment board for settlement.

POSITION OF CARRIER.—Charles Murray entered the service as carman-freight, Huntington, Oregon, July 20, 1922, and has been in continuous service except for periods out of service for disciplinary reasons, November, 1930, August 14 to October 14, 1933, and January 5 to April 3, 1934.

On August 8, 1933, a brakeman was injured in a fall from a car at Willada, Wash. Inspection developed that roof of car was in bad condition with running boards rolled and turned up and numerous screws loose. This car arrived at Huntington July 15, 1933, and was inspected by Car Inspector Murray. Following investigation in accordance with the rules, Murray was dismissed from service August 14, 1933. Appeal for reinstatement was made in his behalf by the representative of the employes, and on September 22, 1933, it was agreed to reinstate Murray on a leniency basis. Murray was notified to return to work, but declined to do so unless he was reimbursed for time lost. He finally resumed work on October 14, 1933.

On January 5, 1934, he was dismissed from service for overlooking cotter key missing in the foundation brake rigging of a car inspected by him on that date. In the investigation conducted in accordance with the rules of the agreement, Car Inspector Murray admitted that he did not see the missing cotter key. Appeal in his behalf was made by representatives of the employes of his class, and the local supervision agreed to consider reinstatement on leniency basis. Mr. Murray declined to accept reinstatement without pay

for lost time. On April 2, 1934, he requested and agreed to reinstatement with the understanding that claim for pay for time lost would be handled by his representatives under the agreement.

Agreement with System Federation No. 105 became effective November 1, 1934. On February 14, 1935, the general chairman of the federated shop crafts requested, in connection with Car Inspector Murray's claims for pay for time lost, review of the cases for which he was dismissed on August 14, 1933, and January 5, 1934. This review developed that the circumstances in connection with his dismissal on August 14, 1933, were sufficiently extenuating to leave some reasonable doubt as to Car Inspector Murray's responsibility for the defective condition of car resulting in injury to the brakeman, but that the investigation definitely established responsibility in connection with the dismissal on January 5, 1934.

As indicated above, Car Inspector Murray could have returned to service on September 22, and would have been working between that date and October 13, 1933, if he had not declined to return to service and leave the question of back pay to investigation and handling by the committee. He was likewise out of the service a considerable period during which he might have been working in connection with the dismissal of January 5, 1934, due to his declination to accept reinstatement unless reimbursed for time lost for the period off duty. In any event, it was determined that there were no extenuating circumstances in connection with the January, 1934, occurrence that justified reimbursement with pay for time lost for any of the period off duty.

Mr. Murray in presenting his claim refers to the fact that he was dismissed from the service by the car foreman January 5, 1934, and then permitted to work, and taken out of service January 6. This did not constitute exoneration and reinstatement. The car foreman required approval of his action by the master mechanic located at another point, and permitted Murray to work pending receipt of advice of approval of his action, which was received after he had worked on January 5.

Calculation made from the carrier's records showed that the time lost by Car Inspector Murray during the period he was out of service from August 14, 1933, the date of his dismissal, to September 22, 1933, the date he could have returned to work, was \$152.81. The matter of his reinstatement in connection with his second dismissal was the subject of several discussions between Murray and the local supervisors prior to the formal discussion made a matter of record on April 2, and the exact date that he might have returned to work could not be definitely established. In order to dispose of the case it was agreed with the general chairman to reimburse Car Inspector Murray in the amount of \$235.97, with the understanding that payment of this allowance would constitute final and complete disposition of all pending claims in connection with both dismissals.

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 waived right of appearance at hearing thereon.

The Railway Labor Act (as approved June 21, 1934), among its many provisions, contemplates:

"GENERAL PURPOSES

"Sec. 2. * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Also:

"GENERAL DUTIES

"Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized

so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute."

This dispute was handled in accordance with the above provisions of the amended Railway Labor Act and properly settled between the designated and authorized representatives of the employes and the carrier.

AWARD

Claim to be disposed of in accordance with the agreement entered into between the designated and authorized representatives of the employes and the carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1936.