

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)
MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Boilermaker B. M. Gibson for compensation equal to thirty-seven days and four hours pay as a boilermaker, rate of 81 cents per hour, a total amount of \$243.90, for time lost due to being discharged effective December 14, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Mr. B. M. Gibson was, effective December 14, 1933, discharged; he was reinstated, seniority unimpaired, February 16, 1934.

POSITION OF EMPLOYEES.—The committee takes the position that Mr. Gibson was discharged due to his affiliation with the I. B. B. I. S. B. & H. of A. (boilermakers international union) and not for cause as claimed by management, i. e., loafing at flange fire. We are offering, to offset this claim, Exhibit "A" (statement of B. M. Gibson), wherein he informed the foreman that he was going to sing at funeral on request of family of deceased, and when he was denied the privilege of laying off to sing at the funeral, he stopped by the flange fire and borrowed a quarter for his noon day meal. Mr. Gibson has been in the habit for years of singing at funerals, both employes and outsiders. When he sang for employes the company paid his salary and for outsiders the company allowed him to lay off for these occasions, but suddenly and without notice on this particular day the local foreman denied him the privilege of his past practices and then when he attempted to get the loan of a quarter for his lunch, he was accused of loafing and discharged. Mr. Gibson refused to submit to an investigation for the reason that he was denied the privilege of choosing his own representative and for the reason as he states, that he knew from other investigations that were being held at that time, he could not expect a fair and impartial hearing with company union committee, and he also states that he had been warned by employes that the company knew he had joined the A. F. of L. and that he was on the "spot" and would not agree to be represented in this manner. Mr. Gibson also brings out other items in his statement wherein he frankly relates facts defending his position in the matter.

We also contend that after serving nine years singing on the Missouri Pacific Railway quartet and during all this period of time being allowed special privileges for his services and then without notice he is discharged for loafing on the job for the same thing that had been the practice for nine years could not be called for cause.

We also contend that there is nothing of record to indicate Mr. Gibson was reinstated on a leniency basis or that he had waived claim for compensation for time lost.

We are, therefore, in compliance with Rule 32 (e) of agreement in effect as of 1929, and up to and including agreement of October 31, 1934:

"**RULE 32 (e).** If it is found that an employe has been unjustly suspended or dismissed from the service such employe shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

claiming compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—Mr. B. M. Gibson, employed as boilermaker in the back shops at Little Rock, Arkansas. At or about 11:25 A. M., December 14, 1933, Mr. Gibson was observed neglecting his duties and loafing, for which he was suspended from service and instructed by the boiler foreman to report to the shop superintendent for formal investigation. On

December 6, 1933, Mr. Gibson reported to the shop superintendent, but declined to participate in an investigation that was accorded him by the shop superintendent under rules of the wage agreement with the shop employees.

On February 15, 1934, Mr. Gibson called upon the shop superintendent appealing for reinstatement on a leniency basis; his plea was granted and he was returned to work effective February 16, 1934.

POSITION OF CARRIER.—On December 14, 1933, boilermaker foreman, Little Rock shops, observed Boilermaker Gibson on the south side of the boiler shop talking to another employe, while at that hour (11:25 A. M.) Mr. Gibson was supposed to have been working as a boilermaker in the cab of engine 20, some fifty feet distant, on the opposite side of the shop. Mr. Gibson was charged with "loafing" on duty, suspended by the general boiler foreman and instructed to report to the shop superintendent for formal investigation before discipline was applied, which is in accordance with our wage agreement rules with the shop employees. (See carrier's Exhibit "A".)

December 16, 1933, Mr. Gibson reported to the shop superintendent, was advised of the charges preferred against him and directed to prepare for formal investigation, at which he was entitled to have present any witnesses and the right to be there represented by appropriate representatives as provided for in Rule 32 (d) of the wage agreement. Mr. Gibson became very indignant, and in a threatening attitude toward the shop superintendent told him that he did not wish representatives, refused to proceed with the investigation and left the shop superintendent's office.

Mr. Gibson made no effort whatsoever to handle his case in accordance with the rules of the wage agreement until February 15, 1934, when he called upon the shop superintendent and plead that he be returned to service, which plea was granted by the shop superintendent under conditions outlined in shop superintendent's affidavit and accompanying affidavit of his chief clerk, who was present at the conference shop superintendent had with Mr. Gibson on February 15, 1934. (See carrier's Exhibits "B" and "B-1".)

Some year and three months following Mr. Gibson's return to service, general chairman of the boilermakers presented claim for time Mr. Gibson lost during period he was out of service between December, 1933, and February, 1934, contending that Mr. Gibson was discharged without a hearing or fair trial. It is a fact that Mr. Gibson was not afforded a formal investigation as required by the rules, but the reason therefor was not the fault of the carrier, as Mr. Gibson was tendered a formal investigation as provided for in the wage schedule rules, and Gibson declined to participate therein. The general chairman further contended that Mr. Gibson (quoting from general chairman's letter May 10, 1935):

"The file shows that Gibson did nothing at all except ask a fellow workman for the loan of twenty-five cents to buy his lunch with on account of him being without lunch thinking he was going to be off at noon to sing at a funeral as he had done in the past."

The general chairman's contentions may be a fact, but the excuse for Mr. Gibson's loafing on duty should and would have been brought out at an investigation which the carrier attempted to accord Mr. Gibson on December 16, 1933. If Mr. Gibson had a reasonable excuse to offer for his loafing, he or his representative should not have withheld it for a year and three months following the date that Mr. Gibson was actually returned to service. It is reasonable to assume that had Mr. Gibson complied with the wage agreement rules and participated in the investigation that was tendered him, any reasonable excuse that he had for neglecting his work would have received appropriate consideration by the employing officers at the Little Rock shops. When he deliberately refused to participate in the investigation and made no explanation whatsoever for his neglect of duty the carrier had no alternative but to consider him out of service when he left the company premises, of his own volition. To ask the carrier to compensate him from the time he walked off the job in December, 1933, to the date he returned on February 15, 1934, and plead for leniency, certainly is a far-fetched claim and without foundation under any schedule rules, practices, or otherwise.

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.

There was voluminous evidence submitted in this case. The file is a substantial one filled with affidavits and counter affidavits and sharp conflict of facts between the parties, upon which it will serve no good purpose to comment.

The employee involved in this dispute was one of a group taken out of service for alleged cause and later reinstated.

Rule 32 reads:

"(a) No employe shall be disciplined without a fair hearing by a designated officer of the railroad.

"(b) Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule.

"(c) At a reasonable time prior to the hearing such employe will be apprised of the precise charge against him.

"(d) The employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his choosing who must be a member of the Missouri Pacific Mechanical Department Association.

"(e) If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

There is some question as to Gibson being afforded opportunity of an investigation with a representative of his choice in accordance with the rules, and there was no investigation held.

The Division, after giving consideration to all of the evidence submitted by both parties, finds that Gibson was unjustly dismissed.

AWARD

B. M. Gibson shall be compensated for wage loss due to his dismissal.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1936.