NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (BOILERMAKERS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES.—Claim of Boilermaker J. L. Hamblett for compensation equal to 37 days and 4 hours as a boilermaker, rate of 81 cents per hour, a total amount of $241.78, for time lost due to being discharged, effective December 21, 1933.

EMPLOYES' STATEMENT OF FACTS.—Mr. J. L. Hamblett was, effective December 21, 1933, discharged; he was reinstated, seniority unimpaired, February 16, 1934.

POSITION OF EMPLOYES.—The committee takes the position that Mr. Hamblett 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., absence from his work and loafing while on duty. We are offering, to offset this claim, Exhibit "A", statement of J. L. Hamblett, wherein he states that his air hose had become tangled while caulking mud ring corner and was attempting to straighten it out, talking as he worked to some fellow workman machinist, was accused by general foreman of loafing on the job, and subsequently discharged. Mr. Hamblett had been advised by local secretary of company union that he was on the spot for becoming a member of the international union; he also states that he was asked to sign a letter by two company union secretaries to withdraw from the union (A. F. of L.) and in so doing he would not be discharged or discriminated against in any way, but he refused. Also various other items in his statement wherein Mr. Hamblett defended his position with frank statements of facts in detail.

We contend that there is no matter of record of proof that Mr. Hamblett was off his job or loafing on duty as charged by the railway company, but as will be noted in Mr. Hamblett's statement, he had been informed by three parties in a position to know, that he was going to be discharged account of his union activities.

We contend that the reason why there was never an investigation of this case was that Mr. Hamblett was denied the privilege of choosing his representative and would not submit to an investigation with local company union committee, knowing that they were against him for reason stated before, and, therefore, Mr. Hamblett was never granted an investigation or hearing with witnesses present.

We also contend that there is nothing of record to indicate Mr. Hamblett was reinstated on a leniency basis or that he 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. J. L. Hamblett employed as boilermaker in the back shops at North Little Rock, Arkansas. On December 21, 1933, Mr. Hamblett was observed loafing during working hours; suspended from service by the boiler foreman and directed to report to shop superintendent for formal investigation. Mr. Hamblett reported to the shop superintendent and formal investigation tendered, in which Mr. Hamblett declined to participate, departing from the company premises and on February 15, 1934, he called

upon shop superintendent asking that leniency be extended in his case and that he be put back to work. His request was granted and he resumed work with restoration of his former seniority effective February 16, 1934.

POSITION OF CARRIER.—On December 21, 1933, Mr. Hamblett was assigned to work on engine 6423, caulking in the fire box while engine was undergoing test. During working hours the general foreman observed by Mr. Hamblett was away from his work visiting with a machinist who was working nearby. The foreman suspended Mr. Hamblett, charging him with loafing and neglecting his work while on duty, directing him to report to the shop superintendent for formal investigation under rules and regulations of our wage agreement with the shop employes. (See carrier's Exhibit "A".)

Mr. Hamblett reported to the shop superintendent and was advised that formal investigation would be held, at which he was entitled to representation provided for in the wage agreement rules. Mr. Hamblett declined to participate in the investigation, departing from the shop superintendent's office and left the company premises. He was not again heard from until February 15, 1934, when he called upon the shop superintendent and plead that leniency be extended in his case, that he be reinstated with his former seniority rights. His request was granted with the distinct understanding that he would not be compensated for any wage loss sustained—see carrier's Exhibits "B" and "B-1", affidavit from shop superintendent and his chief clerk, the latter being present at the conference between Mr. Hamblett and the shop superintendent.

In May, 1935, general chairman of the boilermakers presented claim in favor of Mr. Hamblett that he be compensated for the alleged wage loss sustained during the period he was out of service between December, 1933, and February, 1934, contending that he was improperly removed from service and that he was not afforded an investigation prior to his removal from service. The facts in the case are that Mr. Hamblett was merely suspended from service pending an investigation; that an investigation was accorded him under rules of our wage agreement; that Mr. Hamblett declined to participate in the investigation, hence the responsibility for there being no investigation was due to Mr. Hamblett's own acts and not the carrier's. Mr. Hamblett deliberately left the company premises of his own volition, made no attempt whatsoever to participate in the investigation that was to be held for the purpose of developing the facts in connection with the foreman's charge that Mr. Hamblett had been neglecting his work and loafing while on duty. If Mr. Hamblett had accepted the investigation that was tendered him it is possible that the facts would not have justified his removal from service, but in any event his attitude in walking off the property, giving the carrier's officers no opportunity to obtain the facts in the case, could not be considered a violation on the part of the carrier of any wage rules in the agreement with its employes to the extent that would penalize the carrier to pay any time lost by Mr. Hamblett. Mr. Hamblett or his representatives made no effort whatsoever to comply with the wage agreement rules, but on the other hand he, of his own volition, absented himself until February 15, 1934, when he called on the shop superintendent and plead for leniency that he be reinstated to his former position and that his seniority be restored. He nor his representatives, during the period he was out of service, filed any claim that he had been unjustly suspended, hence when he did come back he did not present his request for return to the service on a merit basis but on a leniency basis, and it was with this understanding that he was returned to service.

There is no justification under our wage rules with the employes that would sustain general chairman's claim that Mr. Hamblett be compensated for the wage loss he sustained by his own acts, and the general chairman's request has been declined.

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 employe 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 an employee 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 Hamblett 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 Hamblett was unjustly dismissed.

AWARD

Hamblett shall be compensated for wage loss due to this 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.