

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—Claim of Car Inspector M. I. Strickland for compensation equal to 179 days' pay at car inspectors' rate, 71¢ per hour, a net amount of \$820.00, for time lost due to being discharged, effective October 22, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Car Inspector M. I. Strickland was discharged from service October 22, 1933, and reinstated March 19, 1934.

POSITION OF EMPLOYEES.—That Car Inspector Strickland was discharged from service by the Missouri Pacific Railroad account of affiliating with the B. R. C. of A. and not for cause as claimed by management, i. e., Car Inspector Strickland was removed from service account of violation of blue flag Rules 26 and 730.

We contend that Car Inspector Strickland did not violate Rules 26 and 730; that he was working under instructions of his foreman, and that the facts hereinafter set forth clearly justify our position, as well as being borne out by investigation Exhibit A.

On September 22nd, Car Inspector Strickland and foreman made a joint inspection of tank car SDRX 5567, finding a defective air hose. The foreman instructed Strickland to remove the defective hose, which he did under the foreman's supervision, then went to supply box for new hose, and on his return and as he was about to apply it, the foreman advised him he was discharged account of performing his work without blue flag protection.

Car Inspector Strickland on being advised of his discharge, pointed out to the foreman that switch engine was over on repair track and that there was only one switch engine in service. He also advised the foreman it had never been the practice of inspectors in train yard to display blue signal for the application of air hose, unless switch engine was in yard working. The latter statement is borne out by investigation Exhibit A.

We contend that prior to Car Inspector Strickland's discharge it was a general practice among the inspectors not to use blue flag protection when applying air hose, unless engine was working in yard. This practice was well known to local supervision.

We further contend that Missouri Pacific Railroad discharged Car Inspector Strickland solely on account of his activities in organizing the B. R. C. of A. and in support of this statement we submit Exhibits B and C.

Exhibits D, E and F make reference to Car Inspector Strickland returning to service on a leniency basis. We contend that such an understanding is not a matter of record; therefore, in accordance with Rule 32 (e) of agreement April 1, 1929, in effect up to and including current agreement November 1, 1934:

"Rule 32 (e). If it is found that 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."

we are claiming compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—Mr. M. I. Strickland, car inspector, Alexandria, La., dismissed from service following investigation afforded him, at which he was represented by representative of his choice, on September 25, 1933, for violation of transportation Rule 26, reading:

"A blue signal displayed at one or both ends of an engine, car, or train, indicates that workmen are under or about it; when thus protected it must

There was no violation of this rule, as Mr. Strickland was relieved from service for cause following an investigation afforded him at which he was represented by a representative of his choice and whereat he admitted that the charges preferred against him were a fact; his return to service was not because he had been unjustly suspended or dismissed from the service, but was on a leniency basis and under conditions named above, viz: the restoration of his former seniority rights without pay for time lost, and, further, upon his promise to in the future observe rules governing the conditions of his employment. The general chairman's claim was denied by the master mechanic and his appeals to higher officers of the carrier were likewise 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 employes 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.

It is not disputed that Carman Strickland failed to protect himself with a blue flag, as prescribed in the safety rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

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