Award No. 108
Docket No. 108
2-MP-CM-'36

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES.—Claim of Freight Car Painter M. C. George for compensation equal to 98 days' pay at freight car painters' rate, 72¢ per hour, a net amount of $423.03 for time lost due to being unjustly laid off October 27, 1933.

EMPLOYES' STATEMENT OF FACTS.—Freight Car Painter M. C. George was laid off October 27, 1933, and returned to service February 23, 1934.

POSITION OF EMPLOYES.—That Freight Car Painter George was laid off by Missouri Pacific Railroad account of affiliating with the B. R. C. of A. and not for cause as claimed by management, i. e., Freight Car Painter George was laid off in accordance with Missouri Pacific Mechanical Department Association Agreement, dated April 1, 1929, Rule 26, paragraph (a).

On January 9, 1933, the master mechanic combined the locomotive and freight car painter's jobs; he assigned said position to Freight Car Painter George.

On October 27, 1933, the Master Mechanic laid off Freight Car Painter George and replaced him with Locomotive Painter Wilkus.

The master mechanic quotes Rule 26 (a) of Mechanical Department Association Agreement, April 1, 1929, in support of his action (see Exhibit A).

MISSOURI PACIFIC AGREEMENT

APRIL 1, 1929.

"RULE 26 (a). At outlying points and on shifts at any point where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

We contend that in accordance with Rule 26 (a) above quoted, Freight Car Painter George, being the only painter mechanic employed, was entitled to continue on the job, and in laying him off and assigning another mechanic who was junior in service, provisions of Rule 26 (a) were violated.

Exhibit B makes reference to separate sub-divisions maintained for painters at that time. This is correct, consequently the only seniority that could be involved would be service seniority. Freight Car Painter George's service seniority is 10-23-22 and Wilkus' 6-19-23. The question of car force being reduced should have no bearing on the case, as records will indicate that Locomotive Painter Wilkus worked approximately four hours each day on freight car painting and four hours on locomotive painting all during the time Painter George was laid off.

See Exhibit C in affidavit form statement of Painter George setting forth various reasons as to why he was displaced by a junior employe.

In support of Painter George's affidavit Exhibit C, see Exhibits D, E, and F from car department employes employed at Coffeyville.

In view of the facts, stated herein, we contend that Painter George was unjustly dealt with, 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 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."

we are claiming compensation in the amount aforementioned.

service in accordance with Rule 21 of our wage agreement again quoted for ready reference:

"RULE 21 (c). In the restoration of forces, senior laid off men will be given preference of re-employment, if available within a reasonable time, and shall be returned to their former positions when these former positions are re-established."

The employes in this case are claiming that Mr. George be compensated for the alleged time he lost amounting to $423.03, during the period he was laid off from October 27, 1933, to February 23, 1934. There is no basis for such contention under our schedule rules and agreed upon applications thereof. Mr. George was laid off in a force reduction in strict accord with the schedule rules governing, and he was returned to service in a like manner.

There is no rule in our schedule that would sustain the employe's contention, and his claim was properly denied by the management.

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.

The evidence in this case does not support the petition of the employes for compensation for wage loss.

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.