

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 Carman Helper John Jahr for compensation equal to 30½ days' pay as carman helper, rate 52¢ per hour, a net amount of \$114.45 for time lost due to being discharged, effective January 15, 1934.

EMPLOYEES' STATEMENT OF FACTS.—Carman Helper John Jahr was discharged from service January 15, 1934, and reinstated February 20, 1934.

POSITION OF EMPLOYEES.—That Carman Helper John Jahr was discharged from service by Missouri Pacific Railroad account of affiliating with the B. R. C. of A. and not for cause as claimed by management; i. e., John Jahr was dismissed for violation of Rule 804.

"**RULE 804.** Employees are required to report any misconduct or negligence affecting the Railroad's interest. Withholding such information will be considered proof of negligence or indifference and treated accordingly."

That Missouri Pacific Railroad failed to prove violation of Rule 804 by Car Helper Jahr, we submit for your consideration Exhibit A, and further that Exhibit B indicates the underlying facts in the case.

Exhibits C, D, and E make reference to reinstatement on leniency basis. We contend there is nothing of record to indicate any such understanding; 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 employee has been unjustly suspended or dismissed from the service such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

we claim compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—Mr. Jahr employed at Dupu, Illinois, February 7, 1926, to January 15, 1934; dismissed from service following investigation afforded him by master mechanic, at which he was represented by a representative of his choice, for failure to report theft of radio from NYC car No. 50127, of which he had knowledge, by another employee in violation of transportation Rule 804, reading:

"Employees are required to report any misconduct or negligence affecting the Railroad's interest. Withholding such information will be considered proof of negligence or indifference, and treated accordingly."

Mr. Jahr appealed his case to master mechanic requesting reinstatement on a leniency basis with restoration of his seniority rights as a carman helper at Dupu, but without pay for time lost, and upon this understanding the master mechanic granted Mr. Jahr's request; returned to service February 20, 1934.

POSITION OF CARRIER.—Mr. Jahr entered service of the Missouri Pacific Railroad Company on July 7, 1926. On January 12, 1934, NYC car No. 50127 was placed on the Dupu repair track for repairs. An employee of the railroad company in another department extracted a Stewart-Warner radio set from this car while it was standing on the repair track. The employee that removed the radio set from the car was subsequently arrested by government authorities, convicted in Federal Court and sentenced to jail. Mr. Jahr was charged with violation of transportation Rule 804, reading:

"Employees are required to report any misconduct or negligence affecting the Railroad's interest. Withholding such information will be considered proof of negligence or indifference, and treated accordingly."

account failure to report the misconduct of other employees, of which he had knowledge, whereupon he was suspended from the service and directed to report to the master mechanic for formal investigation pursuant to our wage agreement rules with the shopmen (see carrier's Exhibit A).

Investigation was afforded Mr. Jahr by the master mechanic on January 15, 1934, at which he was represented by a representative of his choice (investigation is identified in this case as carrier's exhibit B).

Our wage agreement rules (carrier's Exhibit A) provide for the manner in which employees who believe they have been unjustly dealt with may prosecute their case to the highest official designated by the railroad for handling appeals. Mr. Jahr nor his representative did not avail themselves of the opportunity afforded them for prosecuting the case until more than thirty days after Mr. Jahr was relieved from service, when he personally called upon the master mechanic pleading for reinstatement. The conference held by our master mechanic with Mr. Jahr, and the understanding reached, is set forth in affidavits from master mechanic and supporting affidavits of car foreman, and master mechanic's chief clerk, the latter two being present at the conference. (These affidavits are identified in this case as carrier's Exhibits C-1, 2, and 3.)

Our wage agreement rules, as stated above, provided the channel through which employees who believe they have been unjustly dealt with may prosecute their case, and it has long been an established practice that appeals are considered by the highest official so designated on the railroad from the individual employees or their representatives. Where pleas are made by individuals or their representatives for reinstatement on leniency basis there has never been any question raised as to pay for time lost, as has been done in this instance. Mr. Jahr was returned to service on February 20, 1934, and some year and four months later the general chairman of the carmen's organization reopened the case, requesting that Mr. Jahr be compensated for the alleged time lost, contending that his removal from service and subsequent reinstatement was in violation of Rule 32 (e) of our wage agreement, reading:

"(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."

The carrier denies that the rule was violated and that the employe was unjustly dismissed. There being no violation of the rule, the general chairman's request for compensation in favor of Mr. Jahr was denied by the master mechanic and sustained by the higher officers of the carrier to whom the case had been appealed on the basis that Mr. Jahr was dismissed from the service for cause following an investigation afforded him as provided for in the rules, at which he acknowledged his guilt, and that his reinstatement to service was on a leniency basis and with the further distinct understanding that while his seniority rights would be restored, he would not be paid for time lost (see carrier's Exhibit B).

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.

Jahr was dismissed for failure to report theft of a radio from a box car in violation of transportation rule No. 804.

Jahr had no knowledge of this transportation rule, neither does investigation develop that he was guilty of its violation.

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

AWARD

John Jahr 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.