

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 Harrison Sanders for compensation equal to fifty days' pay at carmen's rate, 72¢ per hour, a net amount of \$259.85 for time lost due to being discharged, effective December 12, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Carman Sanders was discharged from service December 12, 1933, and reinstated February 19, 1934.

POSITION OF EMPLOYEES.—That Carman Sanders was discharged from service by the Missouri Pacific Railroad account of affiliation with the B. R. C. of A., and not for cause as claimed by management, i. e., Carman Sanders was removed from service account of defective workmanship on RI car 157815.

We contend that charges of defective workmanship are discriminatory and exaggerated. On November 15th Carman Sanders was assigned to rivet job on roof of RI car 157815, that had been assembled by other employees; completion of Sanders' assignment revealed that due to some of roof sheets not being properly assembled the driving of rivets caused about ten to twelve boss washers between carline and transverse caps to crack, necessitating their replacement and renewing rivets, the latter performed by Sanders and job O. K'd. perfect by general foreman. (Note this all happened November 15th). On December 12, 27 days later, Carman Sanders was notified to present himself for investigation.

That the most unusual procedure was followed in discharging Carman Sanders is borne out by preceding paragraph; that inconsistency prevailed holding him solely responsible for an act others had equally contributed to.

In Exhibits A, B, and C, reference is made to investigation afforded Carman Sanders, and that he was reinstated on leniency basis. We deny the allegations. (See Exhibit D as summary proof.)

That it is not a matter of record that Carman Sanders waived compensation. 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.

CARRIER'S STATEMENT OF FACTS.—Harrison Sanders, employed as carman, North Little Rock, Arkansas, car shops. Entered service August 12, 1924, dismissed December 12, 1933, for defective workmanship in removing the running boards and transverse caps on RI car 157185 and causing delay to movement of car from November 28 to December 10, 1933. Reinstated to service effective February 16, 1934, on a leniency basis, with restoration of his former seniority rights, but without pay for time lost.

POSITION OF CARRIER.—Mr. Sanders was assigned to repairs on RI car 157185 in the car shops at North Little Rock, Arkansas. Upon completion of the repair job to which he was assigned, the general car foreman observed defective workmanship on the part of Sanders that necessitated the removal of running boards and transverse caps, remove broken washers, and straighten out caps in order to apply new roof, which delayed the foreign car in our shops from November 28 to December 10, 1933, thus causing unnecessary per diem expense on the car, and in addition thereto extra labor and material expense in repairing car.

Mr. Sanders entered our service at Little Rock in August 1924 and claimed prior experience as a carman for some thirteen years prior thereto on other

railroads. His prior work was uniformly satisfactory; however, the workmanship on this particular job was of such an unsatisfactory nature that the general car foreman called it to the attention of the shop superintendent. In the judgment of the shop superintendent the repairs on the car were defective, necessitating the work be all done over again, to which Sanders was assigned and performed a satisfactory job. On December 12, 1933, Mr. Sanders was suspended from service for the initial unsatisfactory performance of work on this car and afforded formal investigation under wage rules of our wage agreement with the employes (carrier's Exhibit A), at which investigation he was tendered representatives to represent him as provided for in the agreement. Mr. Sanders, however, declined representation at the hearing, nevertheless, the hearing proceeded and Mr. Sanders was unable to offer any reasonable excuse for the unsatisfactory work he performed, and following the investigation he was relieved from the service, effective 3:30 P. M., December 12, 1933.

Investigation papers in this case identified as carrier's Exhibit B.

Although our wage agreement rules (carrier's Exhibit A) provide for a channel through which employes and/or their representatives may appeal discipline cases where they feel they have been unjustly dealt with, no appeal from the decision of the shop superintendent dated December 12, 1933, to Mr. Sanders, wherein he was advised of his dismissal from service as of that date, was made to the carrier until February 16, 1934, when Mr. Sanders called upon the shop superintendent, pleading for leniency and reinstatement to his former position. Details of this conference are contained in shop superintendent's affidavit and accompanying affidavit of his chief clerk who was present at the conference, marked carrier's Exhibits C and C-1, respectively. In this case Mr. Sanders' plea was granted with the distinct understanding that he would be more careful with his work in the future, and that he was being reinstated on a leniency basis with restoration of his former seniority rights but without pay for time lost. This is the condition under which Mr. Sanders was permitted to return to service effective February 16, 1934.

In June, 1935, some year and five months following Mr. Sanders' return to service following his plea and conference with the shop superintendent, general chairman of the carmen, who had not handled Mr. Sanders' case for reinstatement under rules of the schedule, filed a claim in his behalf for alleged time lost during period he was out of the service between December, 1933, and February, 1934, contending that the carrier had removed Mr. Sanders for insufficient cause and that he was denied an investigation prior to his dismissal. The facts in the case are that Mr. Sanders was afforded an investigation prior to his dismissal at which he was tendered representatives to represent him as provided for in the wage schedule agreement; and, further, that the charges preferred of unsatisfactory work were sustained in the investigation, this being the cause of Mr. Sanders' removal from service. General chairman's request that Mr. Sanders be compensated for alleged wage loss was denied as the carrier did not violate any rules of its wage agreement with the employes in the handling of this case, and there was no rule in the schedule to support the employes' claim for a monetary consideration in favor of Mr. Sanders.

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 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."

Sanders was charged with failing to properly perform work assigned to him. During the investigation Sanders refused to have local committee represent him and requested representation of his choice, which was denied and, therefore, in violation of the rules of agreement.

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

AWARD

Harrison Sanders 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.