

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 Freight Car Welder W. H. Carpenter for compensation equal to thirty-eight and one-half days' pay at freight car welder's rate, 77¢ per hour, a net amount of \$213.79 for time lost due to being discharged, effective January 4, 1934.

EMPLOYEES' STATEMENT OF FACTS.—Freight Car Welder W. H. Carpenter was discharged from service January 4, 1934, and reinstated February 19, 1934.

POSITION OF EMPLOYEES.—That Freight Car Welder W. H. Carpenter was discharged from service by Missouri Pacific Railroad account of affiliating with the B. R. C. of A., and not for cause claimed by management, i. e., Freight Car Welder Carpenter was removed from service account of defective workmanship on IC car 159617.

We contend that the weld performed by W. H. Carpenter on IC truck side 159617 was not defective; that he performed this particular job according to the usual and generally accepted standard; that on several occasions prior to this time he had made welds on similar repairs entirely to the satisfaction of local supervision and traveling supervisor of welding; and, further, that at no time had the Missouri Pacific Railroad made any arrangement whereby Freight Car Welder Carpenter could become acquainted with ARA Rule 23 covering welding.

We further contend that the local supervision who condemned the particular weld in question was not competent to act as the sole judges and had they not been motivated by a spirit of unfairness they would have arranged for the traveling supervisor of welding or some other equally competent party to pass judgment on the job before dismissing Carman Carpenter.

In support of our contention that Carman Carpenter did not perform defective work, see Exhibits A and B; and as further proof that the cause of his dismissal was due to joining the B. R. C. of A., see Exhibit C.

Exhibits D, E and F make reference to Carman Carpenter being returned 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 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.—Mr. W. H. Carpenter, employed as carman in back shops at North Little Rock, Arkansas; January 2, 1934, he was assigned to weld a frame on IC box car 159617—work to conform to ARA Rule 23. January 3, 1934, assistant freight car foreman, in the performance of his duties, inspected the work performed by Mr. Carpenter and found same defective, necessitating the frame being returned to the shop to be rewelded, thus causing additional expense, as well as delay to a foreign car. Mr. Carpenter was suspended from service and reported to shop superintendent for formal investigation January 4, 1934, following which he was relieved from service account unsatisfactory work.

February 19, 1934, Mr. Carpenter appealed to the shop superintendent that leniency be extended, that he be returned to service with his former seniority rights, which request was granted with the distinct understanding that he would not be compensated for any time he may have lost. He was returned to service at 1:00 P. M., February 19, 1934.

POSITION OF CARRIER.—January 2, 1934, Mr. Carpenter was assigned to weld cast steel truck side on IC box car 159617. The assistant freight car fore-

man specifically instructed Mr. Carpenter the necessity of performing a first-class job on this foreign car to meet ARA requirements (Rule 23). See carrier's Exhibit B. Inspection of the work following its completion by Mr. Carpenter developed a defective job, report of which the foreman made to the general car foreman and the latter reported the situation to the shop superintendent. (See carrier's Exhibit C.) Mr. Carpenter was suspended and instructed to report to shop superintendent for formal investigation pursuant to our wage agreement rules with the shop employes (carrier's Exhibit A).

Mr. Carpenter was proffered representation to which he was entitled under rules of the wage agreement; however, he declined to afford himself of a representative, stating: "I will represent myself." The investigation proceeded, which is identified in this case as carrier's Exhibit D. There being no extenuating circumstances surrounding the unsatisfactory work performed in this instance, Mr. Carpenter being considered a first-class welder, having been in our service since May, 1923, and five years prior service with another railroad. He was relieved from service following the investigation and charged with unsatisfactory work.

No appeal from the decision of the shop superintendent was made, either by Mr. Carpenter or his representatives, until February 19, 1934, when Mr. Carpenter called upon shop superintendent and plead for leniency. The conference with shop superintendent is covered by his affidavit and accompanying affidavit of his chief clerk, who was present at the conference, marked carrier's Exhibits E and E-1.

In June, 1935, or some year and four months following Mr. Carpenter's return to service on a leniency basis, general chairman of the carmen filed claim contending that Mr. Carpenter should be compensated for any time he may have lost between January 4, 1934, and February 19, 1934, account (quoting from his letter of June 6):

"My records further indicate that he was denied investigation, account of his refusal to submit to representation by other than representative of his own choosing. My files, however, indicate that he was removed from service for insufficient cause; I am, therefore, requesting that in accordance with Rule 32, paragraph (e), of current wage agreement, that Freight Car Welder W. H. Carpenter be compensated for all time lost, amounting to \$213.79."

This request was declined as Mr. Carpenter was afforded an opportunity to have representatives present at the investigation, and he was not removed from service for insufficient cause, nor did the carrier violate Rule 32 (e) of wage agreement. Mr. Carpenter was relieved for cause and, as plainly indicated by carrier's Exhibits E and E-1, he was returned to service on a leniency basis and with the distinct understanding that he would not be compensated for time lost.

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.

Carpenter was a welder of 13 years' experience. There is no evidence that he was careless in performing this work which was done as in the past without exception being taken or that his work in this instance was so lacking in thoroughness as to justify his dismissal.

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

AWARD

W. H. Carpenter 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.