

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 Truckman W. M. Holmes for compensation equal to one hundred eighty-eight and one-half days pay at freight car truckman's rate, 60¢ per hour, a net amount of \$804.74 for time lost due to being discharged, effective September 9, 1933.

**EMPLOYEES' STATEMENT OF FACTS.**—Freight Car Truckman Holmes was discharged from service September 9, 1933, and reinstated March 16, 1934.

**POSITION OF EMPLOYEES.**—That Truckman Holmes 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., Truckman Holmes was removed from service account of performing his work in an unsafe manner.

We contend that Truckman Holmes took the customary precaution in the performance of his duties, that account of it being necessary to apply center plate rivets on empty coal car, he followed the usual and accepted procedure by blocking wheels at other end of car first, then jacked car up, moved trucks back, set car back down on trucks and blocked wheels.

Exhibits A and B make reference to Truckman Holmes quitting and later restored to service on leniency basis. We contend it is a matter of record he did not quit, as he was restored to service with seniority rights unimpaired.

We further contend that Truckman Holmes was denied investigation and that charges preferred were discriminatory rather than actual (see Exhibits C, D, and E). Further, it is not a matter of record that claim for compensation was waived, therefore, in accordance with Rule 32 (e) of agreement April 1, 1929, in effect up to and including current agreement of 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. M. Holmes entered our service as freight car truckman August 11, 1924. September 9, 1933, the shop superintendent observed Mr. Holmes and his helper performing their work in an unsafe manner in violation of safety rule 74 (carrier's Exhibit D), whereupon Mr. Holmes was suspended from service and instructed to report to office of the shop superintendent for formal investigation under rules of wage agreement. Following the investigation that was held on September 9, 1933, Mr. Holmes did not wait for a decision but left the company's premises of his own volition and did not return until March 16, 1934, on which date he called at the office of the shop superintendent applying for reinstatement on a leniency basis. His plea was granted and he was returned to service effective same date—March 16, 1934.

**POSITION OF CARRIER.**—On September 9, 1933, the shop superintendent observed Carman Holmes, together with his helper, working on a car on the repair track in an unsafe manner, in that Holmes had jacked up the car, placing the jack in the center of the coupler, no horses placed under the car, and he, and his helper at his (Holmes') direction, proceeded to work under the car on the center plate applying rivets thereto. Such a performance was considered, under our safety rules, as an unsafe practice and Mr. Holmes and his helper were directed to report to the shop superintendent's office for the purpose of obtaining their statements, at which hearing they were represented by a representative of their choice, viz, local chairman of the carmen.

Investigation held pursuant to wage rules of our wage agreement (see carrier's Exhibit A).

Investigation identified in this case as carrier's Exhibits B and B-1.

Following investigation and without awaiting decision of the shop superintendent, Mr. Holmes, at 8:30 a. m., September 9, 1933, turned in his time card to the car foreman and left the shop of his own volition.

Mr. Holmes or his representatives made no effort whatsoever to seek either re-employment or reinstatement until March 15, 1934, when Mr. Holmes called at the shop superintendent's office in Little Rock and requested that he be permitted to return to service with restoration of his former seniority rights, to which the shop superintendent agreed under conditions outlined in his affidavit, carrier's Exhibit C, and accompanying affidavit C-1 of his chief clerk who was present at the conference the shop superintendent held with Mr. Holmes on March 16, 1934.

Mr. Holmes was returned to service as an act of leniency, with restoration of his former seniority rights but with the distinct understanding between him and the shop superintendent that his absence from the service between September, 1933, and March, 1934, was brought about by Holmes' own acts in walking off the property and that his return to service was on a leniency basis and without pay for time lost.

In June, 1935, some year and four months following Mr. Holmes' plea on March 15, 1934, for his reinstatement, which was granted, the general chairman of the carmen filed claim with the carrier that Holmes be compensated for the time he lost while out of service between September, 1933, and March, 1934, basing his contentions (quoting from general chairman's letter June 5, 1935):

"My records further indicate that Freight Car Truckman W. M. Holmes was not given an investigation prior to his discharge from service. I have, however, various statements and affidavits that would indicate that truckman Holmes was removed from service for insufficient cause; I am, therefore, requesting that in accordance with Rule 32, Paragraph (e) of current wage agreement that Holmes be compensated for all time lost, amounting to \$804.74."

The facts in the case are as stated above, that Mr. Holmes was given a formal investigation; that he was NOT discharged from the service, but walked off the company property of his own volition and the carrier did not violate any provisions of Rule 32 (e) of our wage agreement, reading:

"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 general chairman's claim for compensation has been declined, there being no basis therefor under any of our wage agreement rules with the employes.

**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.