Award No. 117
Docket No. 117
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 Carman M. R. Anderson for compensation equal to fifty-five days' pay at Carman's rate of 72 cents per hour, a net amount of $316.80, for time lost due to being discharged effective December 11, 1933.

EMPLOYES' STATEMENT OF FACTS.—Carman Anderson was discharged from service December 11, 1933, and reinstated February 16, 1934.

POSITION OF EMPLOYES.—That Carman Anderson was discharged from service by Missouri Pacific Railroad account of his affiliating with the Brotherhood of Railway Carmen of America, and not for cause as claimed by Management; i. e., Carman Anderson was removed from service account of defective workmanship on MP car 41792.

Further, that Carman Anderson did not perform defective workmanship, other than in replacing draft gear, it was necessary to jack car up and place two blocks of wood temporarily between side bearings, and on completion of job he overlooked removing blocks.

That to our knowledge Missouri Pacific officials had never in the past discharged an employe for such an infraction of rules. Carman Anderson has had many years of faithful service with the Company and up to date of discharge had never been subjected to discipline.

Exhibits A, B and C make reference to investigation given Carman Anderson, also that he was reinstated on a leniency basis. In refutation of same we submit for your consideration Exhibit D, and, further, that there is no record available to indicate or prove that Carman Anderson waived claim for compensation.

In view of facts as stated herein, we are, therefore, in accordance with Rule 32 (e) of agreement in effect as of April 1, 1934, and up to and including current wage 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."

claiming compensation in the aforementioned amount.

CARRIER'S STATEMENT OF FACTS.—Mr. M. R. Anderson, employed as carman North Little Rock, Arkansas, shops; entered service of Missouri Pacific Railroad in December, 1922, and relieved December 11, 1933, account defective work performed by him on Missouri Pacific box car 41792 December 8, 1933. He was afforded formal investigation pursuant to rules of our wage agreement prior to dismissal.

On February 15, 1934, Mr. Anderson appealed to the shop superintendent that he be allowed to return to work; was reinstated on a leniency basis, with restoration of his former seniority rights, effective February 16, 1934.

POSITION OF CARRIER.—On December 8, 1933, Mr. Anderson was assigned to perform certain repair work on Missouri Pacific car 41792 and certified to having made the following repairs:

> Waugh draft gear removed; Bradford draft gear applied.

Car was OK'd by him for service and removed from repair track to train yard where inspection developed that the coupler was 36½ inches above the rail to the center of coupler and the center plate was disengaged and out of the pocket and only the center pin entered into the hole.

The car had been jacked up and two safety blocks had been placed on side bearings and not removed by Mr. Anderson when he finished repairing the car.

Mr. Anderson was suspended from service for unsatisfactory work and tendered an investigation pursuant to our wage agreement with the employes (carrier's Exhibit A).

At the investigation, which is identified in this case as carrier's Exhibit B, Mr. Anderson admitted responsibility for the defective repairs.

Mr. Anderson did not, within a reasonable time following his dismissal, appeal his case, either personally or through representatives afforded him under our wage agreement rules; however, on February 15, 1934, he called upon the shop superintendent, seeking reinstatement. The result of the shop superintendent's conference with Mr. Anderson is set forth in his affidavit and accompanying affidavit of his chief clerk, who was present at the conference, marked carrier's Exhibits C and C–1. Mr. Anderson returned to service on a leniency basis with restoration of his former seniority rights effective February 16, 1934.

In June, 1935, or some year and four months following Mr. Anderson's reinstatement to the service on his plea that leniency be extended in view of his past record, sickness in his family, etc., the general chairman of the carmen filed claim with the shop superintendent that Mr. Anderson be compensated for the alleged wage loss he sustained from the date of his dismissal to the date he was reinstated, contending that (quoting from general chairman's letter of June 6, 1935):

> "According to my records Carman Anderson did not receive an investigation prior to his dismissal from service, he contending for representation of his own choosing, which was denied him by local officials. However, I have sufficient evidence on file to indicate that Carman Anderson was discharged from service for insufficient cause; I am, therefore, requesting that in accordance with rule 32, paragraph (e), of current wage agreement, that Carman Anderson be compensated for all time lost, amounting to $316.80."

The general chairman's contentions were denied, as Mr. Anderson was not removed from service prior to an investigation at which he was proffered an opportunity to obtain representatives to represent him in accordance with the wage schedule rules. The cause for which he was dismissed was considered sufficient, particularly in view of Mr. Anderson's admission, that the charges preferred against him were correct. Rule 32 (e), referred to in the general chairman's letter, of our wage agreement, reads:

> "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."

Mr. Anderson was not unjustly suspended or dismissed, and general chairman's request that he be compensated was denied by the shop superintendent, whose action was sustained by the chief mechanical officer and the assistant general manager, to whom the general chairman appealed.

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.