

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 R. R. Woehl for compensation equal one hundred six days' pay at Carmen's rate 72¢ per hour, a net amount of \$549.51 for time lost due to being discharged, effective November 4, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Carman Woehl was discharged from service November 4, 1933, and reinstated February 19, 1934.

POSITION OF EMPLOYEES.—That Carman Woehl 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., Carman Woehl was removed from service for violation of Rules 800 and 802.

We deny that Carman Woehl was found loafing in shanty the morning of November 4, 1933, as claimed by management. The facts in the case are that he went to inspectors' shanty to get a drink of water, also to replenish his supply of order cards; he was in the act of tying his shoe laces when the foreman entered, and because there happened to be a newspaper opened in front of him the foreman assumed he was reading it. Exhibit A seems to indicate very clearly the attitude and purpose of the foreman.

We contend that management failed to prove the charges; that it was discriminatory to decide the case on the foreman's testimony and not accord similar consideration to Carman Woehl.

Exhibits B and C make reference to Carman Woehl returning 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 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 aforementioned amount.

CARRIER'S STATEMENT OF FACTS.—Mr. Woehl employed as car inspector Lesperance Street yard, St. Louis entered service September, 1922, and suspended November 4, 1933, account loafing (reading newspaper while on duty) in violation of transportation rule 802, reading:

"All employes must devote themselves exclusively to the service, attending to their duties during prescribed hours, residing wherever required, and obeying promptly instructions of executive and general officers, and those of heads of departments, in matters pertaining to their respective branches of the service."

Subsequently refused to report to foreman's office for investigation, became insubordinate in his actions to the foreman and was charged with violation of transportation Rule 800, reading:

"Civil, mannerly deportment is required of all employes in their dealings with the public, their subordinates, and each other. Boisterous, profane, or vulgar language is forbidden. Courtesy and attention to patrons is demanded. Employes must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate superiors."

"A study of the investigation given Car Inspector R. R. Woehl indicates 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 Car Inspector R. R. Woehl be compensated for all time lost, amounting to \$549.51."

Rule 32 (e) of our wage agreement provides:

"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. Woehl was not unjustly suspended nor was he reinstated on a merit basis; Mr. Woehl was suspended for violating one of the company rules, viz.: loafing on duty; he was afforded formal investigation as required by our wage agreement rules with the employes at which he admitted reading a newspaper while on duty, which constituted loafing in violation of transportation rule 802. He was dismissed from the service and subsequently reinstated on a leniency basis, not on a merit basis. The general chairman's request that Mr. Woehl be compensated for wage loss was declined, there being no rule in our wage agreement that would sustain the employe's contention.

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.

Ray R. Woehl was discharged for alleged loafing in car shanty and investigation conducted does not prove that he was guilty of this offense.

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

AWARD

Ray R. Woehl 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.