

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 Airman E. C. Avara for compensation equal to forty-nine days' pay at airman's rate, 72¢ per hour, a net amount of \$228.88, for time lost due to being discharged, effective December 9, 1933.

**EMPLOYEES' STATEMENT OF FACTS.**—Airman E. C. Avara was discharged from service December 9, 1933, and reinstated February 7, 1934.

**POSITION OF EMPLOYEES.**—That Airman Avara 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., Airman Avara was removed from service account of performing improper workmanship on car RUTX 808.

We contend that Airman Avara was not responsible for overlooking defective hand rail on car RUTX 808; that it is not customary for repair men on rip track to make repairs from work slips as the foreman usually follows up the inspector and marks all defects from work slips with crayon; that the foreman marked all repairs with crayon on this particular car with one exception, a defective handrail, consequently Airman Avara did not check the work slip.

We further contend that account of Airman Avara working without the aid of a helper on that particular morning, yet being required to get the regular schedule of cars out, that there was nothing left for him to do but rely upon the foreman's check. The foreman admitted in the investigation that he was aware of the defect but did not call the matter to Airman Avara's attention (see Exhibit A).

We also wish to point out that the defect was repaired before the car left the repair track, thereby eliminating any additional expense to the company; yet management discharged an employe who had eleven years' continuous service and had at no time ever been reprimanded or disciplined for any cause.

We submit for your consideration Exhibits B and C, which we feel are the real facts and the real cause for Avara's discharge. We also contend that any waiver for compensation signed by Airman Avara was done so under duress and not of his own free will. 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. E. C. Avara employed as carman in the North Little Rock, Arkansas, back shops. On December 8, 1933, was assigned to perform certain repair work on RUPX tank car 808, which he reported as having completed, but investigation by the inspector developed that the work had not been properly done and as a consequence the car was delayed on the repair track from noon until the 4:30 P. M. switch.

Mr. Avara was afforded formal investigation at which he was represented by a representative of his choice, chairman of the local shop crafts' committee. Following investigation Mr. Avara was relieved from service, effective 4:30 P. M., December 9, 1933, account unsatisfactory work on tank car RUPX 808.

Mr. Avara's case was subsequently appealed by the general chairman of the

In going over the investigation, also this party's record, I find that he has been a very good employe. Where the work he performed is violation and it is often times necessary to take action—as was done in this case—yet if you feel that this man has had sufficient discipline for this violation, it will be agreeable with the undersigned to return him to work, without pay during the period off.

I am giving Mr. Hubener a copy of this letter, so he may call Mr. Avara in and talk to him, and wish you would also discuss this and other work he is liable to perform and insist on Mr. Avara doing first class work at all times."

Following this advice to the general chairman, Mr. Avara in company with his representative, chairman of the carmen's craft at Little Rock shops, called upon the shop superintendent for the purpose of discussing Mr. Avara's plea to return to the service, and the result of this conference and understanding reached thereat is set forth in the shop superintendent's report February 6, 1934, and memorandum same date bearing signatures of local chairmen and Avara addressed to shop superintendent, copy attached marked carrier's Exhibit C, and C-1.

Mr. Avara returned to service with his seniority rights unimpaired effective February 7, 1934.

The handling given this case is not unusual nor out of the ordinary, as it is not infrequent, where employes are disciplined that their case is subsequently appealed, either by themselves or through their representatives, to the higher officers, particularly in such discipline cases that involve men who have been in the service for a period of years and whose past record is uniformly satisfactory. In such instances, however, where appeals are favorably considered by the general officers and remanded to the employing officer for handling to conclusion, it is always with the understanding that the return to service of the individual is on a leniency basis, without pay for time lost, as otherwise the employes or their representatives, insofar as the shop crafts employes are concerned, would handle their claim under Rule 32 (e) of our wage agreement with them. No reference whatsoever was made to this rule, which is quoted in carrier's Exhibit A, by the general chairman in asking that consideration be given to Mr. Avara's reinstatement, and it was not only understood with them that Mr. Avara was being returned to service on a leniency basis without pay for time lost, but the same understanding was had with Mr. Avara and his local representative, as specifically set forth in the shop superintendent's letter of February 6, 1934, and letter from the local chairman and Avara to shop superintendent same date (carrier's Exhibits C and C-1).

Although Mr. Avara was reinstated to service February 7, 1934, the carmen reopened this case some year and four months later. The general chairman in his letter June 5, 1935, to the shop superintendent contending that Mr. Avara should be compensated for the time he was out of the service between December 1933, and February 1934, basing his claim on (quoting from general chairman's letter June 5) :

"A study of investigation given air brakeman E. C. Avara 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 air brakeman E. C. Avara be compensated for all time lost, amounting to \$228.88."

As stated above, Rule 32, Paragraph (e), of wage agreement was not involved in this case in any manner whatsoever. Mr. Avara was guilty of the charges preferred against him; he was afforded formal investigation as provided for in the wage rules, and his reinstatement followed a plea for leniency made by the employes representatives; whereas, Rule 32 (e) covers cases where employes are UNJUSTLY suspended or dismissed and subsequently reinstated. The general chairman's request was denied by the shop superintendent and his appeals to the higher officers have been denied. There is no justification whatsoever under our wage agreement rules that would sustain the employes' request that Mr. Avara be compensated for the wage loss he sustained, as this case was, as stated above, handled in strict accord with the schedule rules and practices thereunder.

**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.