Award No. 121
Docket No. 121
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 Coach Carpenter B. F. Burnett for compensation equal to twenty-nine days' pay at coach carpenters' rate of 81 cents per hour, a net amount of $171.67, for time lost due to being discharged, effective December 11, 1933.

EMPLOYES' STATEMENT OF FACTS.—Coach Carpenter B. F. Burnett was discharged from service December 11, 1933, and reinstated February 8, 1934.

POSITION OF EMPLOYES.—That Coach Carpenter Burnett was discharged from service by Missouri Pacific Railroad account of affiliating with the Brotherhood Railway Carmen of America, and not for cause as claimed by management, i. e., Mr. Burnett relieved from service account defective workmanship on mail and baggage car 2551.

We contend that management resorted to very questionable and unusual procedure in discharging Mr. Burnett; that out of approximately 900 rivets driven by Mr. Burnett on baggage section of MP car 2551, only four could be found supposedly defective; that 22 days had elapsed between the time Burnett drove the rivets and the supposed defects found; that local supervision inspected Burnett's work when he got through and finding no objections assigned a painter force to the job, who sanded, puttied, and primed the side sheets applied by Burnett.

We further contend that management discriminated against Mr. Burnett in compelling him to cut defective rivets on mail section of car, as this work had been performed by another employe. The motive seems obvious, as it is almost impossible to cut out rivets on side sheets without distorting the sheet, and particularly in this case, as the car was down on the trucks and the rivets had to be redriven from the original head from the outside.

We submit for your consideration Exhibit A which clearly bears out our contentions in the case. We also contend that any waiver for compensation signed by Mr. Burnett was done under duress and not of his own free will, therefore, in accordance with Rule 32 (e) of agreement April 1, 1929, and in effect 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"

we are claiming compensation in the amount aforementioned.

CARRIER'S STATEMENT OF FACTS.—B. F. Burnett, carman (coach carpenter) employed in car shops at North Little Rock, Ark.; dismissed from service December 11, 1933, following investigation afforded him pursuant to our wage agreement with the shop employes at which he was represented by representatives of his choice, the chairman and secretary of the shop crafts at the North Little Rock shops.

Mr. Burnett was relieved for unsatisfactory work performed on baggage car 2551 in November and December 1933.

Mr. Burnett was reinstated on a leniency basis at request of the general chairman. He resumed service effective February 8, 1934.

POSITION OF CARRIER.—Mr. Burnett entered our employ June, 1923, as a coach truckman and subsequently (February 13, 1924) promoted to coach carpenter; relieved from service on December 11, 1933, for unsatisfactory work on mail and baggage car 2551. Following an investigation that was afforded Mr. Burnett, pursuant to provisions of our wage agreement (carrier's Exhibit A)

at which he was represented by representatives of his choice, the chairman and secretary of the shop crafts at North Little Rock, Mr. Burnett was formally advised of his removal from service on December 11, 1933. (Investigation identified in this case as carrier's Exhibit B.)

Our wage agreement rules (carrier's Exhibit A) provide that should an employe believe he has been unjustly dealt with his case may be taken up with the foremen, shop superintendent, with the right of appeal to the mechanical superintendent, chief mechanical officer and thence to the highest official designated by the railroad for handling appeals. In this particular case the employes apparently felt that Mr. Burnett had been unjustly dealt with, as on January 23, 1934, the general chairman of the carmen appealed the case to the mechanical superintendent. The general chairman's appeal, however (carrier's Exhibit C) did not contend that Mr. Burnett had been unjustly dismissed from the service but that he be restored to service on a leniency basis in that there were mitigating circumstances surrounding his case that the location of the car interfered with his performing a satisfactory job of driving the rivets; proper tools were not available; inexperienced helper; past record, etc.

Following receipt of the general chairman's plea, Mr. Burnett's case was discussed with him at Little Rock by the assistant general manager, chief mechanical officer and mechanical superintendent, at which conference the general chairman made a further verbal plea in Mr. Burnett's behalf, but at no time did he contend that Mr. Burnett had been unjustly dismissed and should be restored to service on a merit basis under Rule 32 (e) of our wage agreement, all his pleas being that leniency be extended for reasons stated above.

Following conference at Little Rock the mechanical superintendent notified the general chairman (carrier's Exhibit C–1) that his plea for Mr. Burnett's reinstatement on a leniency basis would be granted under certain conditions, including a requirement that Mr. Burnett call upon the shop superintendent. On February 7, 1934, Mr. Burnett, in company with his representative, called upon the shop superintendent and the result of the conference and understanding arrived thereat is set forth in their statement to the shop superintendent dated February 7th, and his report to the mechanical superintendent bearing the same date, marked carrier's Exhibits C–2 and C–3.

There was nothing unusual in the handling of this case—the employe was suspended from service for cause; formal investigation was held as provided for in our wage agreement rules with the employes prior to dismissal, then the employes appealed that discipline had served its purpose and that Mr. Burnett be returned to service on a leniency basis. Appeals of this nature are always given consideration by the carrier, and where circumstances permit, leniency is extended but not to the extent of reinstating an employe relieved for cause and pay him for any time he may have lost. Of course, where employes are relieved or dismissed for cause and subsequently reinstated under the provisions of Rule 32 (e), they are compensated as provided therein but such cases are classed as "merit" and not "leniency."

In June, 1935, or some year and four months following Mr. Burnett's return to service, the general chairman of the carmen filed a claim that Mr. Burnett be compensated for the alleged time he lost between December, 1933, and February, 1934, basing his contention on (quoting from the general chairman's letter of June 6, 1935, to the shop superintendent):

> "A study of investigation given Coach Carpenter B. F. Burnett, as well as letters and affidavits on file, indicates to me that this man was removed from service for insufficient cause. I am, therefore, requesting that in accordance with Rule 32, paragraph (e), of current wage agreement, that Coach Carpenter B. F. Burnett be compensated for all time lost, amounting to $171.67."

The general chairman's request was denied, as there certainly was no violation of Rule 32 (e) by the carrier in the handling of this case. As Mr. Burnett was not unjustly suspended or dismissed, nor was he reinstated because he was not guilty, but conversely his reinstatement was on a leniency plea from the employe and his representatives and with a distinct understanding of record that he was being returned to service on a leniency basis, and that he would not be paid for any time he may have lost between the date of his dismissal and the date he was returned to service.

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.