

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Second Division**

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)  
MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES.**—Claim of sheet metal worker H. B. Thornton for compensation equal to 14 days, or 112 hours, as a sheet metal worker, rate of 81¢ per hour less 10%, total amount of claim \$81.65.

**EMPLOYEES' STATEMENT OF FACTS.**—Mr. H. B. Thornton was discharged November 10, 1933, and reinstated February 21, 1934.

**POSITION OF EMPLOYEES.**—It is our position that Mr. H. B. Thornton was actually discharged for attending a meeting which was called at his home for the purpose of forming an organization affiliated with the Sheet Metal Workers' International Association, and not for the cause claimed by the railroad company.

You are respectfully referred to Exhibit A and other exhibits, which clearly sustain our contention that Mr. Thornton was discharged for other causes than those alleged by the railroad company, and while he was subsequently returned to service, he is entitled to compensation for time lost as set forth above.

It is very unusual, to say the least, that at the time Mr. Thornton had a union meeting at his home the company found it necessary to transfer him from his regular job to a job on which he had not worked for years and on which there had been a radical change in the method of doing the work, then putting a watch on him and firing him for being incompetent. It is hardly necessary to point out that railroad shops are not operated in that way, and any foreman so incompetent as to pursue such methods would not last long. The act of transferring Mr. Thornton in this way in itself is proof enough to any practical man that there was an ulterior motive, and this case contains ample proof as to the motive.

We refer you to Rule 101 of the agreement in effect:

"Sheet metal workers will not be assigned to work not applicable to them except in emergency cases."

We are in compliance with Rule 32 (e) of agreement in effect as of 1929 and up to the present time:

"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 unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

claiming compensation in the amount above mentioned.

**CARRIER'S STATEMENT OF FACTS.**—Mr. H. B. Thornton employed as sheet metal worker in the back shops at North Little Rock, Arkansas. On November 9-10, 1933, he was assigned to perform a certain piece of work on engine 166. Account of unsatisfactory work, he was suspended from service and afforded formal investigation at which he was represented by the chairman and the secretary of the coppersmiths at the Little Rock shops. Following investigation, he was dismissed from service effective 4:30 P. M., November 10, 1933.

Mr. Thornton was reinstated to service with his former seniority rights, but without pay for time lost, effective February 21, 1934.

**POSITION OF CARRIER.**—Mr. Thornton last entered our service at North Little Rock shops in November 1925, and claimed prior experience as a pipe fitter with other railroads since 1918. On November 9, 1933, he was assigned to perform certain work on engine 166—replacing collars or sleeves to both injector steam pipes, on which work he commenced 3:00 P. M., November 9, 1933, and completed same 2:20 P. M., November 10, 1933. The work to which he

tendent's affidavit and accompanying affidavit of his chief clerk, who was present at the conference, marked carrier's Exhibits D and D-1.

In June, 1935, the general chairman of the sheet metal workers, who has succeeded to this position, presented a claim in favor of Mr. Thornton that he be paid for the time lost during the period he was out of service between November, 1933, and February, 1934, contending that the carrier had violated Rule 32 (e) of the wage agreement. This rule reads:

"(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."

This claim was declined as the carrier did not violate this rule, or any other rule in the wage agreement. Mr. Thornton was dismissed from service for cause following an investigation afforded him under the wage agreement, and he was not reinstated on a merit basis but on a leniency basis as specifically shown in the exchange of correspondence, etc., contained in this file.

FINDINGS.—The second Division of the Adjustment Board, upon the whole record and all 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.

Thornton entered the service as a sheet metal worker November 18, 1925. His services were apparently satisfactory until November 10, 1933, when he was dismissed for poor workmanship. He was taken off his regular work known as pipe work and assigned to brazing collars on copper pipe, a class of work not performed by him since his employment by this carrier.

Rule 101 of agreement reads:

"Sheet Metal Workers will not be assigned to work not applicable to them, except in emergency cases."

Thornton was inexperienced in this class of work. No emergency existed necessitating his use on the work for which he was disciplined.

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

#### AWARD

H. B. Thornton 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.