

Award No. 234

Docket No. 236

2-MP-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition
Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Class B Machinist J. L. Smith, Osawatomie, Kansas, be compensated for all time lost between dates of September 17, 1937, and October 12, 1937—total loss of time 23 days, at rate of \$5.76 per day; total amount involved \$132.48.

EMPLOYEES' STATEMENT OF FACTS: September 17, 1937, Master Mechanic Schepp, Osawatomie, Kansas, instructed Mr. Smith to report to Missouri Pacific Hospital, St. Louis, for examination. Mr. Smith complied with instructions and, as a result, experienced financial loss as set forth in claim.

POSITION OF EMPLOYEES: It is our contention that the master mechanic at Osawatomie, Kansas, did, without good and sufficient reason, cause J. L. Smith to report to Missouri Pacific Hospital at St. Louis, Missouri, for examination with the resultant loss of time as set forth in claim.

As evidence to substantiate our claim, we submit employees' Exhibits B, C, D, and E. Copy of employees' Exhibit B indicates that employees associated with Mr. Smith had no objection to working with him and did not make complaint as claimed by Master Mechanic Schepp. Copy of employees' Exhibit C, affidavit of Mr. Smith, sets forth detail proceedings leading up to time of and during his confinement in hospital and subsequent to his release from hospital.

The particular attention of the Board is directed to that part of Exhibit C wherein Dr. Means (hospital staff physician at Osawatomie) informed Smith that he could see no reason for his going to hospital. Employees' Exhibit D, affidavit of Mr. M. J. Cody and Ellis P. Clawson, is conclusive that Dr. Means was fully versed and was handling the case properly. Employees' Exhibit D, affidavit of D. McIntyre, is further evidence that Mr. Smith's condition did not warrant action adopted by Mr. Schepp. Hospital record also substantiates our claim.

We further contend that the master mechanic did, in sending Mr. Smith to the hospital for examination, act with undue authority; first, due to the fact that Dr. Means, as hospital staff physician at Osawatomie, was in charge of the case and informed all concerned that Mr. Smith was O. K. for service; second, Employees' Exhibit A, copy in part of management's "Position of

employees' co-workers was known to be in such physical condition that his co-workers felt their personal interests were being jeopardized, and when this situation was made known to the employing officer, there was no alternative but to make known these complaints to Mr. Smith and suggest to him that he avail himself of hospitalization that is afforded all employees by the Missouri Pacific Hospital Association. Mr. Smith availed himself of the Hospital Association facilities, and there is no better evidence that he was in need of hospitalization than the record of his stay in the St. Louis Hospital for treatment from September 18, 1937, to October 7, 1937; this record, which is made a part of this submission and marked Carrier's Exhibit 8, is replete and gives a very graphic description of Mr. Smith's stay in the hospital.

There is no rule or practice in our wage agreement with the employees, or otherwise, that has any bearing whatsoever on this case; hence no foundation in fact for the claim the employees have presented on behalf of Mr. Smith.

The claim should properly be denied.

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 employees 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 issue involved in this case is whether the master mechanic at Osawatomie, Kansas, erred in sending employe, J. L. Smith, to the Missouri Pacific Hospital at St. Louis to be examined and treated for varicose ulcers. Both parties to the dispute agreed that no rule had been violated, but the employees claimed that sending Smith to the hospital, without consulting Dr. Means, the local hospital physician who was caring for Smith, the master mechanic had acted arbitrarily and had caused an unnecessary loss of wages to Smith. The carrier indicated as the reason for sending Smith to the hospital that he had been suffering from running sores and that some employees had expressed fears in using tools and toilets which he had used, not knowing the nature of the disease and fearing it be contagious, and that Smith had been off from work as a result of the disease. The hospital record showed the necessity for and value of treatment inasmuch as he was kept for nineteen days and pronounced healed.

The facts of the case indicated the necessity for treatment and, in the absence of any violation of a rule, the action of the master mechanic in sending him to the hospital cannot be pronounced arbitrary.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1938.