

Award No. 284

Docket No. 303

2-MP-FO-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Laborer W. W. Washington, Hoisington, Kansas, be reinstated with seniority rights unimpaired, personal record cleared of all documents pertaining to case, and compensated for all time lost subsequent to dismissal date of May 19, 1938.

EMPLOYEES' STATEMENT OF FACTS: Laborer W. W. Washington, Hoisington, Kansas, was held out of service the morning of May 19, 1938, pending investigation; investigation conducted by Master Mechanic Schepp June 6, 1938. Under date of June 13, 1938, Mr. Washington was advised by letter, over signature of C. C. Chapman, division superintendent, that he was dismissed from service for insubordination and actions unbecoming an employee (employees' Exhibit A).

POSITION OF EMPLOYEES: It is our position that the management by their action in dismissing Laborer W. W. Washington, Hoisington, Kansas, from service on charge of insubordination and "action unbecoming an employee," and by their failure in investigation to establish evidence of insubordination or "action unbecoming an employee," also their failure to comply with provisions of Rule 9 (a) of wage agreement, which reads as follows:

"(a) Employees disciplined will be advised of the cause for such action in writing when requested. No employee will be dismissed without first being given a fair and impartial hearing. Employees may, however, be held out of service pending such hearing."

and also attitude of Master Mechanic Schepp in limiting committeemen representing Washington both to time and nature of questions propounded in defense of Washington, (in plain English, the master mechanic would not permit questions and answers unfavorable to management) did violate, in its entirety, provisions of Rule 9 of current wage agreement, reading as follows:

"(a) Employees disciplined will be advised of the cause for such action in writing when requested. No employee will be dismissed without first being given a fair and impartial hearing. Employees may, however, be held out of service pending such hearing.

(b) Should any employee subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the same shall be taken to the Foreman, General Foreman, Master Mechanic and/or Shop Superintendent, each in their respective order, by the employee or his duly authorized representative

feel the employes are entirely out of bounds in appealing to your Honorable Board on the question of the "measure of discipline" applied by the management, and similarly now that your Honorable Board has assumed jurisdiction of this case by docketing it for hearing, we feel it is beyond the powers of your Honorable Board to rightfully interfere in the measure of discipline applied by the management to its employes.

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 record does not support the carrier's contention that the employe involved was guilty of "insubordination and actions unbecoming an employe."

AWARD

W. W. Washington shall be reinstated with seniority rights unimpaired and paid for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1938.