

Award No. 1215

Docket No. 1151

2-MP-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That on November 5, 1946, Carman R. A. Gaddy was unjustly discharged from the service, and that accordingly the carrier be ordered to reinstate him to all service rights with pay for all time lost retroactive to said date.

EMPLOYEES' STATEMENT OF FACTS: On November 5, 1946, Carman R. A. Gaddy was given an investigation at which time he was formally charged with insubordination by refusing to perform work assigned to him by his supervisors. Subsequent to concluding investigation he was handed copy of letter addressed to General Car Foreman Shelton, over the signature of the investigating officer (Superintendent of Shops A. Hubener), advising that effective November 5, 1946, he was removed from service account of insubordination as developed in investigation.

This dispute has been handled in accordance with the controlling agreement effective July 1, 1936, up to and with the highest designated carrier officer to whom such disputes are subject to appeal, with the result that this officer has declined to adjust it, which is affirmed by a copy of his letter dated May 9, 1947, submitted and identified as Exhibit B.

POSITION OF EMPLOYES: That the basis for Carman Gaddy's dismissal from service on November 5, 1946, is not supported by any rule of controlling agreement, effective July 1, 1936, neither did he violate Rule 1, reading:

"Hours of Service. Rule 1. (a) Eight hours of service shall constitute a day's work. (b) Employees coming under the provisions of these rules, except as otherwise provided for in these rules, will be paid on an hourly basis."

as claimed by General Car Foreman Shelton, since this rule has for its purpose the guaranteeing to employees when they report for duty each day that they will be permitted to work the full eight (8) hours, therefore, the employees reiterate that claimant was not in violation of Rule 1.

With respect to the charges of insubordination, the employees are still unaware what carrier had in mind, since there is no rule of controlling agreement to support such charges. However, if it was intended to apply to the

was not dismissed for violation of Rule 1. He was dismissed for insubordination.

The employees on appeal have made capital of the statement of Mr. Gaddy that he did not speak to Foreman Pope and that he was assigned his duties by General Foreman Shelton. The carrier submits that the investigation shows conclusively that Mr. Pope did instruct Mr. Gaddy to perform the work which he did not elect to do and that his statement is supported by Foreman Wiseman. The employees have stated in appeal that Mr. Wiseman had quitting time of 4:00 P. M. and that this occurrence is alleged to have happened about 4:20 P. M. It is not unusual for a foreman to be on the property a few minutes after his quitting time. The mere fact that Mr. Wiseman had a quitting time of 4:00 P. M. is not conclusive evidence that he was not there a few minutes after 4:00 P. M. when Foreman Pope instructed Mr. Gaddy.

The employees contend on appeal that the work assigned to Mr. Gaddy was hazardous and in direct violation of safety rules account Mr. Gaddy being handicapped by the loss of one eye, also that the light was insufficient. Carrier submits that the work was not hazardous to Mr. Gaddy for he had on numerous occasions performed this same work and no complaint had been made. The carrier also submits that the loss of sight of one eye is not a serious handicap to Mr. Gaddy in performing this class of work and that no provision had been made for assigning him to certain classes of work by reason of the loss of one eye. The carrier also submits that there was sufficient light for the work to be carried on because it had been carried on before and actually carried on by other employees following the refusal of Mr. Gaddy to perform the service and no change was made in the lighting system. The contentions of the employees in their appeal concerning the hazard of the work are not sustained by any evidence submitted in the investigation.

The employees have also expressed doubt in their appeal that Acting Shop Superintendent Henig made any investigation of the hazard following complaint made to him by Mr. Gaddy. We again refer to Mr. Henig's statement appearing on pages 6 and 7 of the investigation, carrier's Exhibit No. 4, in which Mr. Henig relates that he told Mr. Gaddy that he would ask General Foreman Shelton to arrange the work so that it would not be necessary for Mr. Gaddy to get off of the floor and that he then 'phoned Mr. Shelton to this effect. Whether Mr. Henig did or did not make any investigation according to the thought of the representative of the employees is immaterial because Mr. Gaddy was relieved of his complaint when Mr. Henig told him that he would ask Mr. Shelton to arrange the work so that he (Gaddy) would not be required to work off of the ground.

In conclusion, the carrier reiterates its position that Carman Gaddy was discharged for insubordination in that he refused to submit to authority, not on one occasion, but on four occasions—on May 15, 1945, continuing until September 10, 1946—that he was discharged from the service of the company because of insubordination following a fair and impartial hearing and that he was discharged as the result of the facts brought out in the investigation.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 charge of insubordination and not complying with instructions given by supervisors resulted in Gaddy's dismissal. The whole record indicates that dismissal of this employe of long service with the company was unjust in that discipline was too severe. Gaddy might, or should have proceeded differently in his actions. Apparently he was excited over events that arose, and therefore could not be held entirely blameless.

AWARD

Claim sustained with pay for time lost, less any amount earned in other employment during the period in question.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.