

Award No. 1216

Docket No. 1152

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 EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman Welder R. A. Gaddy was unjustly deprived of his service rights at North Little Rock shops, Arkansas, from May 15, 1945 to November 5, 1946, and that accordingly the carrier be ordered to reimburse him for all time lost.

EMPLOYEES' STATEMENT OF FACTS: On May 15, 1945, Carman R. A. Gaddy, subsequent to checking in for duty on his regular assignment as carman welder at 4 P.M., was instructed by General Car Foreman Shelton to work on finishing position on pulpwood cars. Owing to location of cars in car shed, as well as limited lighting facilities claimant, sensing a potential hazard in working off the ground, indicated his fears to General Car Foreman Shelton and failing to receive any consideration then requested that the safety committee be called in to pass judgment, which was also denied; then he made a final plea to be permitted to take time out until the particular assignment was finished by other employes, this request also being denied; thereupon General Car Foreman Shelton ordered him out of service. Subsequently Carman Gaddy proceeded to superintendent of shops' office and conferred with acting Superintendent of Shops Henig, calling the latter's attention to his difficulties with General Foreman Shelton in regard to assigning him to work on a position which he considered hazardous account of insufficient light. Mr. Henig advised him that he could not go over the general foreman's head; then Carman Gaddy requested that the local committee be called in and he be given an investigation. This request was denied by acting Superintendent Henig on the grounds the committee had gone home and he did not have time to conduct an investigation. Claimant then asked for a release so that he might secure other employment, which was denied, unless he would agree to executing a signed statement that he was resigning from the service of Missouri Pacific of his own free will and accord.

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 confirmed by copy of his letter dated May 9, 1947, submitted and identified as Exhibit G.

It has also been alleged, on appeal by general chairman of the carmen, Mr. J. J. Byrne, that Rule No. 32, paragraph (b), was violated because Mr. Gaddy was suspended, and his position in the appeal was that this was not a proper case for suspension. The carrier holds that actually Mr. Gaddy was not suspended from the service because he left the job of his own free will even though he had been advised by the acting shop superintendent that the work would be arranged so that it would not be necessary for Carman Gaddy to get off the ground, and this, in itself, should have taken care of his complaint in its entirety.

Carrier submits that Carman Gaddy was not disciplined without a hearing; that no discipline was applied until after the investigation which was held on November 5, 1946. Carrier further contends that Carman R. A. Gaddy was not suspended by Foreman Shelton on May 15, but that he would have been held out of service by the shop superintendent, in accordance with his instructions of May 16, 1945, and at no time did this man return to the job to go to work, therefore, the instructions of the shop superintendent about holding him out of service pending the investigation were ineffective. This is borne out by the affidavit of Mr. Gaddy, which is submitted as carrier's Exhibit No. 3, in which Mr. Gaddy has stated that he did not receive the shop superintendent's notice of the investigation until May 22, 1945.

It is the carrier's position that there has been no violation of the agreement and that the delay in affording Mr. Gaddy an investigation for his conduct on May 15, 1945, was by reason of his own action.

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, under all the circumstances cited, is questionable as to Gaddy being unjustly deprived of his service rights May 15, 1945 to November 5, 1946, at least to the extent of his being compensated for loss of time.

AWARD

Claim for restoration of service rights sustained.

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Section Division

ATTEST: J. L. Mindling
Secretary

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