Award No. 1367
Docket No. 1295
2-MP-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke 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: 1—That under the current agreement Coach Cleaner Lelia L. Joshmer was unjustly suspended from the service on September 17th and unjustly dismissed from the service on October 8, 1948.

2—That accordingly the carrier be ordered to reinstate this employe in the service with seniority rights unimpaired and compensate her for all time lost.

EMPLOYES' STATEMENT OF FACTS: Lelia L. Joshmer, hereinafter referred to as the claimant, has been in the continuous employment of Missouri Pacific Railroad in the capacity of coach cleaner at Ranken Tract Passenger Yard, St. Louis, since March 27, 1943, assigned hours 8:30 P. M. to 4:30 A. M., seven days per week, her last day of compensated service ending at 4:30 A. M., August 17, 1948.

On the night of August 17, as the time approached to prepare for work, her mother suffered a heart attack (this was the second attack), making it necessary for claimant to remain at her bedside and defer reporting for work. At or about 8:15 P. M. she called general car foreman's office by telephone and in the customary manner, notified the clerk who took the call that account of her mother's unfortunate circumstances, at the same time explaining to him the gravity of the illness, she would be unable to report for work. He (the clerk) referred her call to Mr. McPherson, her immediate foreman, when claimant again related the serious occurrence to her mother, and that she would be unable to report for work that night (August 17), but if her mother's condition improved sufficiently, she would come in later, and if not, she would be in to work as soon as her mother's condition would permit. Foreman McPherson's reply was "okay."

On August 20, 1948, the condition of claimant's mother being sufficiently improved she (claimant) reported for duty in the usual manner, but upon reporting, was advised by the clerk that her time card was held up and it would be necessary to first call her foreman. When the latter arrived, he questioned her about being absent the two previous nights and when she called his attention to their telephone conversation the

wrong and refusing at all times every offer of leniency extended to claimant by the carrier.

Based upon the facts contained herein, this claim should be denied as being wholly without merit, without basis in fact and without support under the rules of the effective Agreement.

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 offered at the hearing sustains the charges made by the carrier against the claimant. These charges constitute a violation of the provisions of Rule 17 of the parties' agreement effective July 1, 1936.

In disciplinary actions it is not only proper, but essential in the interests of justice, to take into consideration the employes' past record when, after the employe has been found guilty of the charges made against him, discipline is being imposed. This for the reason that what might be just and fair to impose upon an employe whose past record has been good might, and probably would be, entirely inadequate for an employe whose past record has been bad. It should be understood that such past record should in no way be considered in determining the guilt or innocence of the party as to the charges for which he is being tried.

In view of claimant's past record, considering the nature of the charge of which she has here been found guilty, we do not find the discipline imposed to be either unreasonable, excessive or arbitrary.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1950.