

Award No. 1562

Docket No. 1487

2-MP-FO-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Laborer Minnie Gordon was unjustly suspended on November 28, 1950 and unjustly dismissed on December 1, 1950 from the service of the carrier.

2. That accordingly the carrier be ordered to restore the aforesaid Laborer to service with seniority rights unimpaired and paid for all time lost retro-active to November 28, 1950.

EMPLOYEES' STATEMENT OF FACTS: Laborer Minnie Gordon, hereinafter referred to as the claimant, was employed by the carrier at its shops in Dupo, Illinois, with a seniority date of February 26, 1943. On November 28, 1950, the claimant was suspended from the service. Under date of November 29, 1950, General Foreman H. C. Welsh directed a letter to the claimant instructing her to appear for investigation on Thursday morning, November 30, 1950, a copy of which is submitted herewith and identified as Exhibit A.

The hearing was held as scheduled on November 30, 1950, and submitted herewith and identified as Exhibit B is a copy of the hearing transcript. Under date of December 1, 1950, Master Mechanic M. H. Losch directed a letter to the claimant notifying her that she was dismissed from the service, a copy of which is submitted herewith and identified as Exhibit C.

The agreement effective September 1, 1949, is controlling.

POSITION OF EMPLOYEES: It is submitted that a perusal of the hearing transcript reflects that the claimant did not refuse to perform the work as directed by the roundhouse foreman, but, did question the instructions of the roundhouse foreman because of the safety elements which follows:

1. The claimant was instructed to clean out the engine truck drop pit which was in a deplorable condition, making it an unsafe place to work and is evidenced by that part of General Foreman Welsh's statement reading:

"I would like to add this that the reason for cleaning out the drop-pit was the fact that the drop-pit that morning was full of

It is also essential to maintain discipline. If the laborers once find out that they can get out of doing their work because the foreman gave them some special consideration, all too often advantage is taken of the consideration extended.

In the case here, claimant did not want to do a task which was clearly a part of her duties, which is admittedly not an easy or desirable task, that is, to get down in a pit under an engine and clean the pit so that the pumps which remove the water would not be stopped up. She looked for an excuse. She saw a wedge made of wood 17½ inches long, 2½ inches wide and 2-¾ inches thick at the heavy end tapered down to nothing at the other end leaning against the cylinder of the engine. She knew that when these wedges were supporting the weight of a locomotive that it is machinist's work to remove them. She therefore said the removal of this wedge was not her work. However, Foreman Keith showed her that the wedge was loose and that it was her work to pick up such wedges and to get them out of the way. This is a simple task for a laborer. Furthermore she contended it was a hazard, (the carrier does not agree) and all that was necessary to make the pit safe for her to work in (according to her own standard) was to move the wedge.

The locomotive on the pit had its footboards removed. This fact perhaps gave claimant the impression or the idea that some of its wheels were missing and therefore it would be dangerous to work under the engine. The fact is that the engine was in the shop to have a cracked cylinder welded and that none of its wheels had been removed. The engine was a switch engine of the type that did not have an engine truck.

There was room to get down into the pits between the steps at the end of the pit and the front of the engine. This is demonstrated by the fact that she was in the pit when Foreman Keith returned.

The lack of discipline exhibited here, that is, a clear cut refusal to follow instructions, is the sort of thing that leads to serious difficulties. Such a breach of discipline must be corrected at once. Drastic steps are necessary to make such people understand the importance of the matter.

A careful reading of General Chairman Van Luik's letter quoted in paragraph 7 shows that he promised that claimant would do her work and that she need never be talked to again but it is Minnie Gordon, the claimant who must do the work and it is only her promise and evidence of an admission on her part that she was in error that is important. Claimant has failed completely to convince the men who know her best, Foreman Keith, General Foreman Welsh and Master Mechanic Losch, that she would mend her ways.

The discipline assessed was necessary. It is not too harsh and it does not abuse the discretion rightfully exercised by the carrier.

This claim must 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 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 waived right of appearance at hearing thereon.

Seniority and the right to work carries with it the responsibility to perform the assigned work in accordance with the provisions of the agreement.

Considering all the facts of record in this case, the Division is of the opinion that the discipline has served its purpose and the claimant should be reinstated with all seniority rights without pay for time lost.

AWARD

Claim to be disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST. Harry J. Sassaman
Secretary

Dated at Chicago, Illinois, this 15th day of July, 1952.