Award No. 1571
Docket No. 1524
2-MP-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That under provisions of Controlling Agreement, particularly Rules 1, 31 and 32 thereof, Machinist Helper G. H. Kienzle, was date of December 29, 1951, unjustly suspended from service pending formal investigation.

(b) That under provisions of Rules 1, 31 and 32 the Carrier was not authorized to dismiss Machinist Helper Kienzle from service date of January 5, 1952.

(c) That accordingly Carrier be ordered to reinstate this employe with all seniority rights unimpaired, with pay for all time lost retroactive to December 29, 1951.

EMPLOYES' STATEMENT OF FACTS: At Kansas City, Missouri, the carrier employed as a machinist helper, Mr. G. H. Kienzle, hereinafter referred to as the claimant. The regularly assigned working hours of claimant being from 12 midnight to 8:00 A. M.—five days per week. The carrier suspended the claimant from service December 29, 1951, and under date of December 31, 1951, ordered him to submit himself for investigation at 1:00 P. M. January 2, 1952, account having been charged with violation of Rule 1, paragraph (a)—"8 Hours service constitutes a day's work."

These developments are affirmed by copy of letter addressed by Mr. Daniel, asst. master mechanic to the claimant, copy submitted herewith, and respectfully identified as employes' Exhibit A.

The investigation of the claimant was conducted on January 2, 1952, and a copy thereof, consisting of ten pages, is submitted herewith and identified as employes' Exhibit B.

Under date of January 5, 1952, the carrier made the election to dismiss the claimant from service. This fact is affirmed by copy of letter addressed by Terminal Superintendent E. H. Campbell to the claimant, copy submitted herewith and identified as employes' Exhibit C.

Agreement effective September 1, 1949, is controlling.

In the claim before your Board, punishment in the form of dismissal from service has been shown to be proper. Certainly there can be no question in this case suspension pending the formal investigation was proper within the meaning of Rule 32 (b), especially here where we have pointed out that your Board has held that the offense involved, absence from an assigned job, is an offense warranting discipline as severe as dismissal in cases where the evidence supports the charge. This part of the claim must be denied.

In part (b) of the claim, the employes, instead of using the phrase "unjustly dismissed" as has been customary heretofore, have for the first time used the phrase "the Carrier was not authorized to dismiss" claimant. The employes have orally argued unsuccesfully before your Board many times that the carrier must have a rule before firing an employe. This is the first time they have made such a suggestion in the statement of claim. On this point, the U. S. Court of Appeals for the Seventh Circuit in Broody vs Illinois Central, 191 F 2d 73, said:

> "The provisions of the Railway Labor Act . . . do not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. Virgian Railway Co. V System Federation, No. 40, 300 U. S. 515-559, 55 S. Ct. 592, 605, 81L. Ed. 789, citing Texas & New Orleans Railway Co. V Brotherhood of Ry. & S. Clerks case, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034. We believe the carrier has the right to discipline its employes."

The Third Division in Award No. 5006 with the assistance of Referee Thomas C. Begley said:

> ". . . all inherent rights of management that the Carrier has not contracted away remain with it."

The Railway Labor Act has not taken away the right and this carrier has not contracted away its right to discipline its employes. There can be no doubt that the carrier has the right to administer discipline as severe as dismissal or discharge under the facts present here. Therefore, part (b) of the claim must be denied.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties to this dispute on the property except that part relating to the wording of part (b) of the claim.

This claim should, therefore, be denied as being entirely without merit and without support under the effective agreement between the parties hereto and without merit even as a matter of equity.

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.

After reviewing the record in this case the Division is of the opinion that Machinist Helper G. H. Kienzle should be reinstated with seniority rights unimpaired but without pay for time lost.

AWARD

Machinist Helper G. H. Kienzle shall be reinstated with seniority rights unimpaired. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

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