

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of Jesse Walls, section laborer, Heth, Ark., that he be paid for time lost on account of being improperly held out of the service from Sept. 14, 1936 to July 16, 1937, inclusive."

EMPLOYES' STATEMENT OF FACTS: "We are quoting below a Joint Statement of Facts agreed upon between Mr. O. W. Limestall, Superintendent of the Arkansas Division and Mr. J. P. Kleinegger, Local Chairman, which clearly sets forth the facts in the case:

STATEMENT OF FACTS
Arkansas No. 9—MW

Jesse Walls was in service as section laborer at Madison, Ark., July 3, 1936, on which date he was injured and sent to company doctor at Brinkley, Ark. He was released by doctor, September 1, 1936, and returned to work at 1:00 P. M., September 11, 1936. Worked until quitting time September 13, 1936, when he was notified by foreman that he was out of service.

Walls had seniority over other men employed at Madison and other points on roadmaster's territory. Foreman did not give Walls benefit of formal investigation. Walls was notified by letter under date of July 14, 1937 to return to work, and returned to work July 23, 1937. Claim is presented for time lost by Walls, less any amounts he may have earned at other occupation during the period he was out of service.

O. W. Limestall, Supt.
J. P. Kleinegger, Local Chairman.

Little Rock, Ark.
Aug. 18, 1937."

CARRIER'S STATEMENT OF FACTS: "While this employe was working as a section laborer on a bridge near Madison, Ark., on July 3, 1936, he violated instructions, and, as a result, was injured. On his recovery he reported for service and, effective September 14, 1936, was dismissed by the section foreman for violating instructions and safety rules, and causing injury to himself (Walls) and penalty to the railway.

"Nothing further was heard regarding his case until June 7, 1937, when the General Chairman of the Maintenance of Way Organization 'phoned our Superintendent indicating that Jesse Walls considered he had a claim account being unjustly dismissed.

of Claim, from September 14, 1936, to July 16, 1937 inclusive. We respectfully request that this Board so direct."

POSITION OF CARRIER: "When this employe was dismissed by his foreman there was no indication that he felt he had a claim against the company and it is understood he secured reasonably steady employment elsewhere and that he preferred to have such outside employment, but on definite advice through his chosen representatives that he did, in fact, desire to re-enter the service of this carrier, arrangements were made to return him to service and the carrier does not feel it should be penalized by the payment of any time lost and is uninformed as to his earnings elsewhere."

There is in effect an agreement between the parties bearing date of January 1, 1936.

OPINION OF BOARD: The record in this case shows that Jesse Walls, the complainant, was dismissed on September 13, 1936, without hearing as provided in Rule 17 of the current schedule; that no protest or complaint thereon was made until the latter part of November, 1936; that due either to misunderstanding or failure to come to earlier agreement upon the re-instatement of Walls, he was not advised that he could re-enter service until July 14, 1937, and his actual return thereto took place July 23, 1937.

Under this situation and owing to the particular circumstances in this case, justice will be accorded by compensating claimant, Jesse Walls, in the amount to which he would have been entitled had he remained on his position or exercised his rights in accordance with the provisions of Rule 3, less amounts earned by him in other employment during the period intervening between the date of his request to return to work, the last of November, 1936, and the date, July 16, 1937, when he could have reported for service following receipt of advice from the carrier that he could return.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein, and

That the claimant shall be compensated in the amount to which he would have been entitled had he remained on his position or exercised his rights in accordance with the provisions of Rule 3, less amounts earned by him in other employment during the period intervening between the date of his request to return to work, the last of November, 1936, and the date, July 16, 1937, when he could have reported for service following receipt of advice from the carrier that he could return.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of July, 1938.