

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI PACIFIC LINES**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the dismissal of Water Service Repairman Robert C. Davis, St. Louis Terminal Division, on November 20, 1946, was improper, unjustifiable, and unwarranted;

(2) That Robert C. Davis shall be restored to the service as water service repairman, St. Louis Terminal Division, with seniority rights unimpaired and paid for time lost.

OPINION OF BOARD: Claimant, Robert C. Davis, had been an employe of the Carrier since June 1, 1934, as a water service repairman. Being a journeyman plumber the claimant qualified as a master plumber under the plumbing ordinance of the city of St. Louis on April 27, 1944, and secured his master plumber's license. The Carrier paid for his license and bond during the years of 1944 and 1945 up to April of 1946. During this period, when requested to do so, claimant obtained plumbing permits for the benefit of the Carrier.

When it came time to renew his master plumber's license in April of 1946 the claimant paid for the expense thereof and did not seek reimbursement from the Carrier nor did the Carrier ever make reimbursement thereof.

On August 8, 1946, the claimant wrote the Carrier in reference to some plumbing work to be done on its property at Seventh and Cerre Streets, suggesting that he should have more pay for this work and asking their consideration of his suggestion.

On November 9, 1946, claimant refused to take out a permit for this plumbing which was to be done on the Carrier's property located at Seventh and Cerre Streets in the city of St. Louis. It is the Carrier's position that by refusing to do so claimant violated the provisions of Rule 122, particularly that part hereinafter underlined.

Rule 122 is as follows:

"DEVOTION TO SERVICE—Employes must be alert, devote themselves exclusively to the service, give their undivided attention to their duties during prescribed hours, reside wherever required, and obey promptly instructions from the proper authorities in matters pertaining to their respective branches of the service."

Thereafter, on November 11, 1946, claimant was notified to report for a formal investigation to be held on November 12, 1946, covering alleged violation of Rule 122 of the Rules and Regulations, which alleged violation it was claimed occurred on November 9, 1946. This hearing was had and on November 20, 1946, claimant was advised that he had been dismissed from the service for refusal to carry out instructions issued to him by a B&B supervisor on November 9, 1946, which instruction was that he should take out a permit for plumbing on the Carrier's property at Seventh and Cerre Streets.

There is nothing in the record to indicate that a water service repairman must be a master plumber and take out plumbing permits for the Carrier. Neither does it appear that any other water service repairman was a master plumber. Nor does it appear that such duties and requirements are within the usual and accepted qualifications and duties of water service repairmen. It does appear from the record that a journeyman's license is sufficient qualification for the work required of a water service repairman.

The Plumbing Ordinances of the City of St. Louis, as revised in 1945, provide as follows:

"66-214-(20). PLUMBERS—NAMES NOT TO BE USED BY OTHERS.

No person or member of any firm, or officer of any corporation, or the agent of any person, firm, or corporation, authorized to carry on the business of plumbing or drainlaying, shall permit his, their or its name to be used directly or indirectly by any other person, either to obtain a permit to do plumbing or drainlaying or to contract for and do such work under a permit obtained by such person, firm or agent of a corporation, or to do any work under his or their bond. Any person violating the provision of this section shall be deemed guilty of a misdemeanor, and in addition thereto the Board of Examiners and Plumbers shall cancel the license of such person, whether he be a member of a firm of any officer of a corporation, or the agent of a person, firm or corporation, who shall allow his permit to be used by any other person, or who permits plumbing or drainlaying to be done under his bond. The license of any person, which shall have been cancelled for a violation of the provisions of this section, shall not be reinstated within six months therefrom. In the event of a failure of any plumber or drainlayer to secure the necessary permits before starting work on any job requiring such permits, thus causing special investigation to be made by the Plumbing Section, a special investigation fee of Five Dollars shall be charged on such work. Any owner, lessee, keeper or agent, who shall fail to comply with or who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor."

Rule 440 requires of Water Service Foremen that:

"They shall have and be familiar with current rules, regulations, instructions and local laws governing their class of work."

At the hearing it was the claimant's opinion that if he were placed in a supervisory capacity he could then, within the provision of the plumbing ordinances, lawfully take out a permit and do this work. However, this suggestion was never acted upon by the Carrier and does not become material here for the record shows that claimant never refused to do any of the regular and ordinary work of a water service repairman, but that he did refuse to take out the permit because he thought that he would thereby violate the plumbing ordinances and endanger his rating as a master plumber.

In doing so we think he was justified. Rule 122 does not require an employe, when directed to do so by his superior officer, to do any act contrary to law. Neither would the fact that he had previously done so require

him to do so again. Nor does it require him to do an act which would endanger his professional standing as a master plumber.

We, therefore, come to the conclusion that his dismissal was unwarranted because made without just cause.

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 Employes involved in this dispute are respectively carrier and employes 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 agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1947.