Award No. 2466
Docket No. 2168
2-MP-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

MISSOURI PACIFIC RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement Sheet Metal Worker Apprentice T. M. Williams and Electrician Apprentice M. R. McClure, and employed as such in the Kansas City Shops, were improperly removed from service and are entitled to reinstatement with seniority unimpaired and compensation for time lost.

That on May 11, 1955, the employes representative appealed to the highest representative of the Carrier, Mr. T. Short, Chief Personnel Officer, and he did not answer the appeal until July 14, 1955, which is in direct violation of Article 5 of the August 21, 1954 Agreement.

EMPLOYES' STATEMENT OF FACTS: Apprentice Williams (seniority date 6-2-53) and Apprentice McClure (seniority date 11-20-53) hereinafter referred to as the claimants, remained in the service of the Missouri Pacific Railroad, hereinafter referred to as the carrier, until they were removed from service at 4:00 P.M. March 28, 1955, pending investigation set for April 1, 1955 in the master mechanic's office, Kansas City, Missouri.

On March 28, 1955, claimants were furnished letter from Master Mechanic Daniel. See submitted Exhibit A.

April 1, 1955 claimants appeared with their chosen representatives in the office of Master Mechanic Daniel, in line with his letter dated March 28, 1955, (see Exhibit A). The carrier refused to conduct a joint investigation and chose Apprentice McClure first to be investigated. Submitted and referred to as Exhibit B, is a resume of the investigation.

On April 15, 1955 further investigations were conducted and the submitted referred to as Exhibits C-1-2 are a resume of the investigation.

The carrier has for several years had a contract with The Railway Educational Bureau, Omaha, Nebraska, to furnish lessons to apprentices and to grade and make monthly reports to the carrier on each apprentice's status, these reports from the 16th of the previous month to the 15th of the current month.

The carrier and System Federation No. 2, Railway Employes' Department, AFofL, Mechanical Section Thereof, entered into a memorandum agreement known as Decision No. SC-105 to become effective February 1, 1942 (copy submitted and referred to as Exhibit D) to further the education of apprentices in their respective trades.

In the report furnished the carrier by The Railway Educational Bureau for the dates February 16, 1955 to March 15, 1955, showed the claimants were delinquent two lessons. The report furnished the carrier by the bureau, covering dates March 16, 1955 to April 15, 1955 shows that the claimants were ahead of schedule for that period, (copy of letter received from the bureau submitted and referred to as Exhibit E).

In Exhibit B the claimants were definitely denied representation of their own choosing when the carrier refused Mr. Jones and Mr. Terry, retained legal counsel for System Federation No. 2, to be a party in the investigation.

On April 20, 1955 the carrier's superintendent, E. H. Campbell, wrote letters to the claimants notifying them they were discharged from the service of the carrier. (Copy submitted and referred to as Exhibit F-1-2).

The carrier failed to insert all of the items that transpired in April 1st investigation, and employes' resume of the investigation held on that date are submitted and referred to as Exhibit G.

Under date of April 29, 1955, an appeal was directed to Mr. L. R. Christy over the decision of Superintendent E. H. Campbell by Mr. G. O. Hawley, president, System Federation No. 2, a copy of which is submitted as Exhibit H. Under date of May 6, 1955, Mr. Christy replied to Mr. Hawley, declining the claim and stating in part, as follows:

> "Under the circumstances, I am not agreeable to restoring apprentices McClure and Williams to service with compensation allowed for time lost as you request."

A copy of Mr. Christy's letter is submitted as Exhibit I.

Under date of May 11, 1955, Mr. G. O. Hawley, president of System Federation No. 2, appealed the case to Chief Personnel Officer T. Short, a copy of which is submitted as Exhibit J. Under date of May 16, 1955, Mr. Short replied to Mr. Hawley, acknowledging appeal and advising him as soon as he had the opportunity to study the facts he would write him again; a copy of this letter is submitted as Exhibit K. Under date of July 14, 1955, Mr. Short wrote Mr. Hawley, declining the claim, a copy of which is submitted as Exhibit L. Under date of July 20, 1955, Mr. Hawley wrote Mr. Short, pointing out to him that his letter of declination was not within the time limit provided for in Article V of the August 21, 1954 agreement and, accordingly, the claimants should be restored to service and paid for all time lost. A copy of this letter is submitted as Exhibit M.

The agreement effective September 1, 1949, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier violated the procedural time limit rule contained in Article V of the August 21, 1954 agreement reading in pertinent part as following:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance."

Since the appeal to Mr. Short was made in letter dated May 11, 1955 and declination was not made by Mr. Short until July 14, 1955, which is confirmed by Exhibits J and L, the carrier is contractually obligated to comply with and settle the claim as presented under that portion of Article V of the August 21, 1954 agreement reading in part as following:

"If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Without for a minute waiving our contentions above that this case must be disposed of by the carrier by settling it on the basis of the claim presented, we will discuss the merit of the case with that understanding.

It is on the basis of the factual statement, in conjunction with Exhibits A, B, C, D, E, F and G that the established record thoroughly and fairly considered warrants a finding of conclusions which follow:

Exhibit A clearly reveals that Mr. Daniel, master mechanic, had predetermined to dismiss the claimants before meeting with them and the local committee on March 28, 1955 by having dismissal notice written prior to meeting, as shown in Exhibit C on page 5, in statement of Local Chairman Muschietty.

Exhibit B further reveals that Superintendent Campbell, carrier's officer conducting the investigation against claimants, was very much determined to take undue advantage of them by denying them the representation they desired.

Exhibit G further reveals that Superintendent Campbell denied claimants' representative General Chairman Hawley the right to question witnesses present.

Exhibit D very clearly outlines discipline to be assessed against apprentices who become delinquent in their lessons and if it had been intended that they write a letter giving explanations it would have been made a part of the agreement and not left up to some dictatorial master mechanic to apply.

Exhibit C-1, pages 3 and 4, further shows that it was not the policy of Mr. Daniel to request such letters from apprentices nor had he received any such instructions from his superior officers.

Exhibit E very plainly shows that status of claimants at time of dismissal were shown ahead of schedule.

Exhibits C-1 and C-2 very plainly show that claimants were perfectly willing to give verbal statements as to reasons why they were two lessons behind on March 15, 1955, at the meeting held March 28, 1955 with the local committee.

Moreover, the separation of these claimants from their continuous employment relations with the carrier is not warranted nor justified on the established record, and on the ground facts, under the provisions of Rule

32 captioned "Discipline" which, with the exceptions of the "Note" read as follows:

"(a) No employe shall be disciplined without a fair hearing by a designated officer of the railroad.

(b) Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule.

(c) At a reasonable time prior to the hearing such employe will be apprized of the precise charge against him.

(d) The employe shall have reasonable opportunity to secure the presence of necessary witnesses, and if he desires representation, said representation shall be by the duly authorized Local Committee or their representative.

(e) If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

In light of the unambiguous provisions of this rule, when it is read in conjunction with the records, it then becomes manifest that discrimination along with determination was used to railroad these claimants out of the shops at any cost to the carrier, consequently if it is found that the claimants have been unjustly dismissed from the service within the meaning of the words as used in Paragraph (e) of the above rule, the statement of claim in its entirety should be sustained.

In conclusion, the record shows the following:

1. The claim as handled on the property and before this Division should be complied with as presented, due to carrier's violation of Article V of the August 21, 1954 agreement.

2. The record does not support the carrier's action.

CARRIER'S STATEMENT OF FACTS: 1. There is an agreement, effective September 1, 1949, between the parties to this dispute on file with your Board which, by reference, is made a part of this submission.

2. Claimant T. M. Williams entered the carrier's service as a sheet metal worker apprentice on June 2, 1953 at Kansas City, and at the time of his dismissal from the service on April 20, 1955, he had completed less than half of his apprenticeship.

3. Claimant M. R. McClure entered the carrier's service as an electrician apprentice on November 20, 1953 at Kansas City, and at the time of his dismissal on April 20, 1955 had completed approximately one-fourth of his apprenticeship.

4. On March 25, 1955 the following letter was addressed to the claimants:

"Kansas City, Missouri
25 March 1955
PR Marquis McClure
PR Ted Williams

Marquis McClure—Elec. Apprentice
Ted Williams —S. M. W. Apprentice

You were advised on March 24, 1955 by Mr. A. J. Daniel, Master Mechanic, in General Foreman's office that you must furnish letter

of explanation for your lessons being behind February 15, 1955 to March 15, 1955. These to be turned in not later that 4:00 P. M., Friday March 25, 1955.

Courtesy is being extended you and you may turn this letter in not later than 4:00 P. M., March 28, 1955.

(Signed) A. J. Daniel"

5. Neither of the claimants complied with the instructions of the master mechanic, and on March 28, 1955, the following notice was given to them:

"Kansas City, Missouri
28 March 1955
GG No. 15159 (M. R. McClure
GG No. 15035 (T. M. Williams)

Messrs. M. R. McClure
T. M. Williams

Dear Sirs:

You were advised on March 24, 1955 by Mr. A. J. Daniel, Master Mechanic, in General Foreman's office that you must furnish letter of explanation for your lessons being behind February 15, 1955 to March 15, 1955, these to be turned in not later than 4:00 P. M., Friday, March 25, 1955 and courtesy was extended you and you were to turn this letter in not later than 4:00 P. M., March 28, 1955.

For your failure to comply with above instructions, you are hereby removed from service, effective 4:00 P. M., Monday, March 28, 1955 for your failure to comply with these instructions issued by Master Mechanic as per above, pending investigation to be held on Friday, April 1, 1955 at 10:00 A. M. in Office of Master Mechanic.

Kindly be present at this investigation, bringing representation of your choice.

(Signed) A. J. Daniel
Master Mechanic"

Although the foregoing notice scheduled the investigation for Friday, April 1, 1955, by mutual agreement the investigation was held on Friday, April 15, 1955 in the office of the master mechanic at Kansas City. Transcript of said investigation has been reproduced and is submitted herewith as carrier's Exhibit A.

6. The testimony given and the facts established at the investigation on April 15, 1955 were carefully reviewed by Mr. E. H. Campbell, terminal superintendent, and on April 20, 1955 he notified each claimant by identical, though separate, letters as follows:

"April 20, 1955
Mr. Ted M. Williams
116 South Lawn Street
Kansas City, Missouri

Mr. M. R. McClure
145 North Elmwood Street
Kansas City, Missouri

With reference to formal investigation held on April 15, 1955, at Kansas City, Missouri, this is to advise that you are dismissed from the service of the Missouri Pacific Railroad Company account your failure to comply with verbal and written instructions of Master

Mechanic A. J. Daniel to furnish letter of explanation account your apprentice lessons behind, period February 15 to March 15, 1955.

If you have any company property in your possession, you will turn in to Mr. A. J. Daniel, Master Mechanic, Kansas City, Missouri.

(Signed) E. H. Campbell"

7. Under date of April 29, 1955, Mr. G. O. Hawley, president, System Federation No. 2 of the federated shop crafts on this property, addressed the following letter to Mr. L. R. Christy, chief mechanical officer:

"April 29th, 1955

Mr. L. R. Christy,
Chief Mechanical Officer,
Missouri Pacific Railroad Co.,
Missouri Pacific Building,
St. Louis 3, Missouri.

Dear Sir:

We are appealing to your office over decision of Superintendent E. H. Campbell, Kansas City, account of removal from service of Electrician Apprentice M. R. McClure and Sheet Metal Worker Apprentice Ted M. Williams.

It is our position that this is very definitely contrary to the Memorandum Agreement signed in St. Louis January 15, 1942, between System Federation No. 2 and Chief Personnel Officer H. E. Roll and Chief Mechanical Officer O. A. Garber.

Your checking into this matter very thoroughly and restoring the above mentioned men to active service with compensation allowed for time lost will be very much appreciated.

By furnishing Superintendent Campbell a copy of this letter it is our notice that his decision is rejected.

Yours very truly,

(Signed) G. O. Hawley, President
System Federation No. 2"

Although there is no evidence to indicate a request for the reinstatement of these claimants was directed to Superintendent Campbell or handled with the assistant general manager as required on this property, on May 6, 1955 the chief mechanical officer declined to restore claimants to service with compensation for time lost.

An appeal was then made to the chief personnel officer in the following letter:

"May 11, 1955

Mr. T. Short,
Chief Personnel Officer,
Missouri Pacific Railroad Company,
Missouri Pacific Building,
St. Louis 3, Missouri.

Dear Sir:

I am appealing to your office over decision of Chief Mechanical Officer L. R. Christy account of removal from service of Electrician

Apprentice M. R. McClure and Sheet Metal Worker Apprentice T. M. Williams at Kansas City shops.

By furnishing Mr. Christy copy of our appeal we are notifying him that his decision is rejected.

Your handling this at an early date will be very much appreciated.

Yours very truly,

(Signed) G. O. Hawley
G. O. Hawley, President
System Federation No. 2"

It is to be noted that President Hawley made no request for the reinstatement of claimants, either with or without compensation for any time lost since their dismissal from service. The discipline administered was, however, the subject matter of a conference between the carrier's assistant chief personnel officer, Mr. B. W. Smith, and President Hawley of System Federation No. 2, at which conference General Chairman J. C. Terhune of the machinists and General Chairman R. E. Martin of the sheet metal workers were present. During the conference, which was held on June 9, 1955, Messrs. Hawley and Martin were informed that these young men can only be restored to service on a basis of leniency, and not then until such time as they demonstrate to the master mechanic and superintendent that they realize they did make a mistake by not carrying out the instructions issued to them.

The decision given in conference was confirmed by letter dated July 14, 1955 addressed to Mr. Hawley, which is quoted below:

"St. Louis 3, Missouri
July 14, 1955
BS-S 360-2618

Mr. G. O. Hawley,
President,
System Federation No. 2,
408 York Hotel,
St. Louis 2, Missouri.

Dear Sir:

This has reference to appeal of May 11, 1955, and conferences which have been held concerning the dismissal of Electrician Apprentice M. R. McClure and Sheet Metal Worker Apprentice T. M. Williams.

As you were advised in conference, we are of the belief that these young men can only be restored to service on a basis of leniency, and not then until such time as they demonstrate to the Master Mechanic and Superintendent of the Kansas City Terminal that they realize they did make a mistake by not carrying out the instructions issued to them. Surely the demands made on these men for written explanation of their failure to have their lessons up to date were not unreasonable instructions, and they should have complied with them. Then, if they felt that they had been unjustly dealt with, there is provision in the agreement for them to handle the matter as a grievance.

You well know that the man who is serving an apprenticeship is not only going to have to learn the technical details concerning the work of a craftsman but is also going to have to learn how to conduct himself and comply with instructions given by his super-

visors. An apprentice who does not learn the proper conduct while serving as an apprentice will certainly not make a good mechanic and employe. We have been inclined to believe that these men have been misled by representatives of their respective organizations and both you and the General Chairman of the Machinists should also recognize this and get the local representatives of your organizations and these two young men straight in their thinking.

Request for reinstatement of Messrs. McClure and Williams to the service on any basis other than that outlined above is declined.

Yours truly,

(Signed) T. Short"

The organization then took exception to a delay of some 2 or 3 days in confirming in writing the decision given it in conference of June 9, 1955, which was occasioned by the absence of Mr. Smith on vacation, and by letter dated July 20, 1955 took the position that Article V of the agreement of August 21, 1954 had been violated, thus obligating the carrier to restore claimants to service with pay for all time lost by reason of said alleged violation.

On July 22, 1955, the following letter was directed to President Hawley:

"St. Louis 3, Missouri
July 22, 1955
BS-S 360-2618
cc 360-1391-9

Mr. G. O. Hawley,
President,
System Federation No. 2,
Room 408, York Hotel,
St. Louis 2, Missouri.

Dear Sir:

Yours of July 20 making reference to ours of July 14, wherein we made a record of some of the things talked about in a conference which Mr. Smith held with you, Messrs. Terhune and Martin, June 9, 1955, and some of the things Mr. Johnson talked with you about during the last week in June:

Because our letter of July 14 was written more than sixty days after your letter of May 11, 1955, you are now taking the position that we have failed to comply with Article 5 of the August 21, 1954 agreement and request that the two apprentices—M. R. McClure and M. T. Williams—be restored to service with pay for all time lost.

Think you might well read your letter of May 11 making appeal to this office. Your appeal does not contain in it, if we want to be technical, any reference to claim for time lost. The fact of the business is that the entire procedure of appeals in this case is questionable. Your letter of April 29, to Mr. Christy, stated that it was appealed from Mr. Campbell account removal of these two men from service. There is no actual record of appeal to the Master Mechanic or the Division Superintendent and the appeal to Mr. Christy is very indefinite as to the matter of pay for time lost.

After you wrote your letter of May 11, Mr. Smith discussed with you, Messrs. Terhune and Martin the matter of restoration of these two young apprentices to service and suggested that the men might be restored to service under the conditions as set forth in the letter

of July 14. You should well remember your remarks in connection with that, and, furthermore, you were willing for these men to be restored to service without pay provided they were not required to go to the Master Mechanic in company with the Local Chairman and admit their errors. You were willing to admit their errors to Mr. Smith.

In the light of all of these circumstances it occurs to us that Article 5 of the August 21 agreement cannot be relied on for pay for time lost, which you now say should be paid, and under the language of Article 5 the question of restoration to service of a man who has been discharged for cause because an answer to a letter is not made within sixty days is most questionable. We are not willing to concede that these men should be restored to service by application of the time limit rule contained in Article 5 of the August 21, 1954 agreement.

Yours truly,

(Signed) T. Short"

Mr. Hawley acknowledged the foregoing in his letter dated July 26, 1955, quoted below:

"July 26, 1955

Subj: Reinstatement of Apprentices
McClure and Williams with compensation
for all time lost.
Mr. T. Short,
Chief Personnel Officer,
Missouri Pacific Lines,
Missouri Pacific Bldg.,
St. Louis, Missouri.

Dear Sir:

Atten: Mr. B. W. Smith

This has reference to your letter of July 22, 1955, File BS-S 360-2618 cc 360-1391-9.

On June 9th General Chairmen Terhune, Martin and myself discussed with you, by your request, the above mentioned subject. At no time during the conference did we agree with you that any leniency was involved as it was our firm position that the above-named apprentices should be restored to service with full compensation for time lost.

We have no desire to go into a lengthy correspondence with you as we think the record involved in this case stands by itself, and it is outstanding that the Carrier violated all Agreements and understandings, however we do desire to meet with you to discuss your letter of July 22nd.

Your setting an early date for conference will be very much appreciated.

Yours very truly,

(Signed) G. O. Hawley
G. O. Hawley, President
System Federation No. 2"

It is to be noted Mr. Hawley requested conference at an early date to again discuss "Reinstatement of Apprentices McClure and Williams with

compensation for all time lost", which we believe should be recognized as a continuation of the negotiations concerning the dismissal of these Apprentices and a waiver of his earlier contention that the provisions of Article V of the agreement of August 21, 1954 requires the carrier to now restore the claimants to service with compensation for time lost.

On July 29, 1955 the carrier acknowledged Mr. Hawley's letter of July 26, 1955, and suggested a conference for the following week. The matter was again discussed in conference, but no agreement was reached.

POSITION OF CARRIER: It is the position of the carrier that the claimants were guilty of the charges preferred against them when they admittedly failed and refused to comply with the instructions issued by Master Mechanic Daniel orally and again in writing as set forth in paragraph 4 of carrier's statement of facts. Failure and refusal to comply with reasonable rules, regulations or instructions issued or promulgated by the management warrants the administration of discipline. In the instant case, the admitted refusal to comply with the instructions of the master mechanic to provide letter of explanation as to reasons why apprentice lessons were not turned in for the period February 15 to March 15, 1955, is tantamount to insubordination, committed deliberately and not by reason of oversight or anger.

Such a premeditated challenge to the authority of the master mechanic, charged with the proper operation of the shop and the administration of the entire apprentice training program of all the crafts employed at Kansas City, by two apprentices with only one-half of their time served cannot be tolerated by management if it is to adequately discharge its responsibility. This fact has often been recognized by your Board in numerous awards, some of which will be referred to at another place in this submission.

During conferences and in correspondence with the organization representatives duly authorized to represent these claimants for collective bargaining purposes and in the handling of grievances, the carrier made every effort to compose this dispute and abate the discipline in the only possible way open to it; that is, require the claimants to demonstrate to the master mechanic and the terminal superintendent at Kansas City that they now realize their mistakes in refusing to comply with the instructions directed to them by the master mechanic, and that they now recognize their obligations as employes.

This matter was fully explained to the organization representatives in conferences, and on July 14, 1955, the chief personnel officer wrote the president of System Federation No. 2 as follows:

> "As you were advised in conference, we are of the belief that these young men can only be restored to service on a basis of leniency, and not then until such time as they demonstrate to the Master Mechanic and Superintendent of the Kansas City Terminal that they realize they did make a mistake by not carrying out the instructions issued to them. Surely the demands made on these men for written explanation of their failure to have their lessons up to date were not unreasonable instructions, and they should have complied with them. Then, if they felt that they had been unjustly dealt with, there is provision in the agreement for them to handle the matter as a grievance.
>
> You well know that the man who is serving an apprenticeship is not only going to have to learn the technical details concerning the work of a craftsman but is also going to have to learn how to conduct himself and comply with instructions given by his supervisors. An apprentice who does not learn the proper conduct while serving as an apprentice will certainly not make a good mechanic and employe. We have been inclined to believe that these men have been misled by representatives of their respective organizations and

both you and the General Chairman of the Machinists should also recognize this and get the local representatives of your organizations and these two young men straight in their thinking."

But the organization refused to take the action set forth in carrier's letter of July 14, 1955 for reasons which have never been made clear to the carrier by its representatives, although the guilt of the claimants is not open to question! They now seek to achieve an unjust solution of this dispute by relying upon a very strained interpretation of Article V of the agreement of August 21, 1954 having to do with the time limit on claims.

The responsibility for the operation of the railroad rests solely upon the management and said responsibility carriers with it the necessary right to formulate the necessary rules and regulations to accomplish that purpose. Instructions which, in the judgment of the officers in charge, are necessary to the operation of its property may be issued from time to time and it is the duty and obligation of those to whom such instructions are issued to comply with them, provided they do not clearly threaten serious injury to life or limb of those required to carry out such instructions.

Since the responsibility for the operation of the railroad rests upon management, so must the maintenance and administration of discipline remain the responsibility and prerogative of management. To hold otherwise would require the carrier to operate the railroad with safety and efficiency bearing sole responsibility for any failure to do so, while denying management the right to exercise any control over the conduct of its employes, or to require their compliance with its rules, regulations and instructions.

A review of the agreement between the parties to this dispute reveals no provision which prohibits in any way the carrier's action in removing the claimants from apprentice training, or any position subject to the provisions of said agreement. Rule 32 does provide, however, that no employe shall be disciplined without a fair hearing by a designated officer of the railroad, but, as we shall presently show, there was no failure to comply strictly with the provisions of said rule.

For the information and convenience of your Board, Discipline Rule 32 is quoted below:

"DISCIPLINE: RULE 32. (a) No employe shall be disciplined without a fair hearing by a designated officer of the railroad.

(b) Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule.

(c) At a reasonable time prior to the hearing such employe will be apprized of the precise charge against him.

(d) The employe shall have reasonable opportunity to secure the presence of necessary witnesses, and if he desires representation, said representation shall be by the duly authorized Local Committee or their representative.

Note: Neither rule 31 nor rule 32 attempts to obligate the Carrier to refuse or grant permission to an individual employe to present his own grievance or, in hearing involving charges against him, to present his own case personally. The effect of these rules, when an individual employe presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, if it or they in each instance so request, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employe and the representatives of the Carrier.

(e) If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The courts have unanimously held that The Railway Labor Act does not interfere with the normal exercise of the right of the carrier to select its employes or to discharge them, and, as we have already seen, the carrier has not contracted away its inherent right to administer discipline. The only thing it did was to agree that

"No employe shall be disciplined without a fair hearing by a designated officer of the railroad."

The National Railroad Adjustment Board is, of course, a creature of a statute enacted by the Congress of the United States. Any authority it has to order the reinstatement of the claimants to carrier's service must come, if at all, from said statute, The Railway Labor Act, as amended. A review of the testimony of the witnesses appearing before the committee on Interstate Commerce while the 1934 amendment was under consideration clearly supports the conclusion that it was not contemplated that the Board would be authorized or expected to substitute its judgment for that of the carrier in matters of discipline but would, at most, function only as a Board of Review to determine whether or not the carrier fulfilled its contractual obligation to accord an employe "—a fair hearing—" prior to the administration of discipline.

Your Board, with the assistance of Referee Carter, recognized and affirmed the prerogatives of the carrier in the operation of its property and the policy of the Board when called upon to interfere with the maintenance of discipline, in the following quotation from Award No. 1814:

"The operation of a railroad is complex. Many departments and crafts must perform responsible work to produce efficient railroad operation. Most employes accept their responsibilities, but when laxness and indifference manifest themselves, discipline must sometimes be imposed to secure the necessary personal service required. If this were not so, chaos and confusion would soon hinder efficient and safe operation. It is for these reasons that this Board would hesitate to interfere with the action of the carrier in cases such as we have before us. It is quite evident that these claimants improperly assumed that they would not be needed until Train 211 arrived at 6:15 P. M. The assumption was not justified with the result that carrier was forced to call on others to do their work. Carrier clearly had the right to enforce its instructions and compel obedience to its orders which were definite and positive. To hold otherwise would unduly restrict the right of management to efficiently operate its railroad. Claimants were given a hearing at which they had full opportunity to be heard and to produce witnesses. The action of the carrier appears to have been motivated by necessity and not by action that could be deemed arbitrary or capricious. We find no reason for interfering with the action of the carrier."

In Award No. 1089 of the Fourth Division, your Board recognized its limitations when it held that:

"It is not the function of this Board to substitute its judgment for that of the carrier in matters of discipline."

This was affirmed by the Third Division in Award No. 2498, the First Division in Awards No. 15790 and No. 15905; also Second Division Award No. 1389 and No. 1817.

Long ago in Award No. 5197 of the First Division, Judge Edward F. Carter, speaking for the Board, carefully prescribed the elements of a fair

hearing, which have been recognized and accepted by numerous awards of all Divisions. These elements are as follows:

1. The accused will be apprized of the charges preferred against him.

2. He will have notice of the hearing with a reasonable time to prepare his defense.

3. He shall have an opportunity to be present in person and by representative.

4. He shall have the right to produce evidence in his own behalf.

5. He shall have the further right to cross-examine witnesses testifying against him.

On March 28, 1955 a written notice was addressed to claimants which contained the charges preferred against them and set the time and place for an investigation or hearing in connection therewith. Said notice also requested claimants to bring a representative of their choice. See paragraph 5 of carrier's statement of facts.

Although the notice prescribed the time and place of the hearing, by mutual agreement the hearing was postponed until Friday, April 15, 1955.

A transcript was made of the proceedings had and the testimony given at the hearing, which has been reproduced and submitted herewith, designated as carrier's Exhibit A. Said transcript reveals the presence of General Chairman Hawley and Local Chairman Muschietty of the electricians and General Chairman Martin and Local Chairman St. Louis of the sheet metal workers, as well as the committeemen of both crafts. Claimant McClure stated he desired Mr. Hawley to represent him, and Claimant Williams stated he wanted "Mr. G. O. Hawley and the rest present" to represent him.

Both claimants were asked if they had received proper notice and if they were ready to proceed and both answered in the affirmative. As the transcript reveals, the claimants offered testimony in their own behalf and the right of cross examination was afforded to them and their representatives. So we must conclude the carrier discharged its obligation to afford the claimants "a fair hearing" as required by Rule 32.

But let us go farther and see whether or not there is substantial evidence which, if believed, will support the charges preferred against these claimants. As we shall presently show, there was uncontradicted evidence by the claimants themselves that they failed and refused to comply with the instructions given to them by Master Mechanic Daniel!

The following colloquy between Superintendent Campbell and Claimant McClure is recorded at pages 2 and 3 of the transcript of the investigation, carrier's exhibit A: (Questions by Campbell—answers by McClure)

"Q. Did you have a verbal conversation with Mr. Daniel in the afternoon of March 24. 1955?

A. Yes sir.

Q. In the course of this conversation did Mr. Daniel tell you to furnish him information in writing explaining why you were behind in your lessons as an apprentice?

A. Yes sir.

Q. Were these instructions confirmed and the time extended in writing to you under date of March 25th?

A. Yes sir.

Did you comply with the instructions?

A. **No sir.**

Q. What was the basis of your decision not to comply?

A. **Well, I didn't think I had to.**

Q. Why did you think you did not have to?

A. Because Muschietty had advised me not to, because it would be held on my personal record, and I was ready to give Mr. Daniel a statement telling him why I didn't have my lessons in.

Q. Who is Mr. Muschietty that you refer to?

A. He is local chairman of the electricians.

* * * * *

Q. Did you understand that the advice from Mr. Muschietty, your local chairman, nullified the instructions of the Master Mechanic?

A. No sir.

Q. Did such advice from Mr. Muschietty relieve you of the personal responsibility for your action?

A. **No sir."**

In conference on the property, the organization representatives contended these claimants were discharged for their failure to keep up their apprentice lessons. That this is not true is revealed by the testimony of Master Mechanic Daniel under cross examination by Mr. G. O. Hawley. On pages 4, 5 and 6 of the transcript, carrier's Exhibit A, is found the following:

"Q. Under what agreement or memorandum of agreement gives you the authority as a Carrier's representative to issue orders and threats to any employe to furnish you a personal letter?

A. . . . It has been necessary in the past to request the written explanation from apprentices whenever it was deemed necessary to impress upon him his obligation and personal responsibility in living up to his contract. I have such a letter on file from Apprentice C. R. Vaught as far back as March 29, 1953, with the explanation as to why he, at that time, was behind with his lessons. It is my position, as Master Mechanic, when I receive the apprentice schedule from the Railway Educational Bureau written to me as Master Mechanic, listing all apprentices showing their standing each monthly period and we take whatever necessary handling that we feel is necessary to help see the apprentices are not delinquent under this schedule as this training schedule becomes a part of their 4 year record file. Therefore when Mr. McClure refused a reasonable request he was removed from service, **not for failure to be on schedule with his lessons, but for insubordination in carrying out the reasonable request by the Master Mechanic** who is charged with the responsibility of the apprentices, as well as the entire mechanical operation at Kansas City Terminal. It was explained to Mr. McClure at the time, that **if he felt that this was an imposition** that he should furnish same and **it could be properly progressed by the committee under the provisions of the agreement as a grievance.** (Emphasis added)

* * * * *

Q. Has it been your policy since being Master Mechanic in Kansas City to request such letters from all delinquent apprentices?

A. Only when we feel that it is necessary, and in this case we deemed it necessary."

Sheet Metal Worker Apprentice T. M. Williams admitted his guilt under interrogation by Superintendent E. H. Campbell. See page 1 of his statement as follows:

"Q. Did you fill out standard application form 339 when starting to work?

A. Yes.

Q. Do you perform various sheet metal worker duties?

A. Yes sir.

Q. Do you receive instructions from the supervisory foremen in the diesel shop in connection with your work?

A. Yes.

Q. Do you carry out such instructions cheerfully and promptly?

A. Yes.

Q. Do you know Mr. Daniel the Master Mechanic?

A. Yes.

Q. Do you know that he has entire shop and all the people that are employed there?

A. Yes.

Q. Did you ever receive any instructions from Mr. Daniel other than appears in the caption of this investigation?

A. No.

Q. Did you have a verbal conversation with Mr. Daniel March 24, 1955?

A. Yes.

Q. In the course of the conversation did Mr. Daniel tell you to furnish him certain information account being behind in your apprentice lessons?

A. Yes.

Q. Were these instructions confirmed and time extended in writing to you under date of March 25, 1955?

A. Yes.

Q. Did you comply with the instructions?

A. No sir.

Q. What was the basis of your decision not to comply?

A. **I was acting on advice given to me by my local chairman.**

Q. Can you identify him by name?

A. Mr. R. D. St. Louis.

Q. What was the nature of the advice?

A. **Not to write the statement that Mr. Daniel wanted.**

Q. Did you then understand that this nullified the written instructions of the Master Mechanic?

A. No.

Q. **Did such advice relieve you of your personal responsibility for your own action?**

A. **No.**

Q. Was it your personal responsibility which you now accept for not complying with this?

A. **Yes.** (Emphasis supplied)"

Your Board will note Claimant Williams admits he refused to comply with instructions given to him in writing by the master mechanic and also admits he filled out standard form application 339 upon his entry into the service of the carrier. Without reproducing the entire application made by claimant, we quote below one of the conditions to which he agreed when he applied for employment:

> "5. **To observe all rules and regulations governing the service to which I shall at any time be assigned;** and to maintain strict integrity of character, abstain from the use of intoxicant liquors, **and perform all duties assigned to me to the best of my ability."** (Emphasis supplied)

It is quite apparent that had claimant refused to accept the above quoted condition of employment, he would not have been accepted for apprentice training. But he admits he agreed to the foregoing condition, which is not unreasonable and concerns a material matter, and then admits he violated his commitment. This clearly warrants dismissal from the service.

Although such admitted misconduct of these apprentices is not to be taken lightly for reasons which are quite obvious to your Board, as well as to all informed persons, it is to be noted the local chairman of the crafts involved both **advised** the claimants **not to comply** with the instructions of the master mechanic. Such conduct by organization representatives is highly irregular, and to be upheld in this action by the national officers of the federation, as well as the two labor organizations involved, is quite incredible and lays the organizations before this Board open to a charge of irresponsibility.

So we must conclude that the claimants are guilty of the charges preferred against them, established by their own testimony and that of their representatives.

We come now to a consideration of the quantum of discipline administered to these claimants.

As we have conclusively established, the claimants were guilty of insubordination in refusing to comply with the instructions of their supervisory officer, Master Mechanic A. J. Daniel, for which they were dismissed from the apprentice training program, and from the service of the carrier.

Numerous Award of your Board have denied claims for reinstatement of employes dismissed from service of their employer for failing and refusing to perform their duties and for failure to observe and comply with instructions issued to them in the course of their employment.

Award No. 1425, Second Division, Electricians vs. The Pullman Co.—The Board, with Referee Swacker, denied claim for reinstatement account refused to comply with instructions.

Award No. 1548, Second Division, Carmen vs. The Pullman Co.—Reinstatement denied carman who refused to comply with instructions resulting in his discharge from service.

Award No. 1367, Second Division, Carmen vs. Missouri Pacific Railroad Co.—Reinstatement denied to coach cleaner discharged because of refusal to comply with instructions.

Award No. 1459, Second Division, Carmen vs. C. & E. I. R.R. Co.—Reinstatement denied account refusal of carman to comply with instructions, the Board holding as follows:

> "The investigation appears to have been held in accordance with applicable rules of the agreement. Claimant was present and admitted he refused to comply with carrier's directions that he report for a physical examination. This constitutes insubordination and warrants the imposition of discipline.
>
> It is the position of the claimant that the agreement does not require him to take physical examinations and that he could therefore refuse to comply with directions with respect thereto. We desire to point out that the supervision of employes is in management. Directions of the carrier must be obeyed if the railroad is to be efficiently operated. The burden rests upon management to to comply with collective agreements entered into by the carrier and its employes. If carrier violates the agreement the Railway Labor Act provides the recourse that the employe or organization may pursue. The directives of the carrier must, however, be followed. Utter confusion would result if each employe were permitted to determine for himself if directions received were in accord with the collective agreement. A failure to carry out the directions of the carrier, unless they exceed all bounds as to reasonableness, constitutes insubordination. The case against claimant was established by his own admissions. He is subject to discipline."

Award No. 1542, Second Division, Machinists vs. Union Railway Co. (Memphis)—Reinstatement denied machinist dismissed account insubordination, the Board holding as follows:

> "Discipline is a necessary adjunct between employes and their superiors in order to have proper relations between them. An employe must be obedient to the orders of his superior. If he had complaints to make there are proper methods for doing so. See Rule 31 of the parties' effective agreement. After sixteen months of service it is apparent that claimant has much to learn in this respect. We find the dismissal fully justified by the facts shown in the record."

Award No. 1458, Second Division, Carmen vs. The Pullman Co.—Reinstatement denied a carman account refusing to comply promptly with instructions given him by his supervisor, the Board finding as follows:

> "The carmen of System Federation No. 122 contend the company unjustly discharged Painter Helper Abdul Lateef on February 12, 1951. Lateef's discharge resulted from the company finding him guilty, after a hearing, of the following charges: 'that on November

24, 1950, you refused to comply promptly with instructions given you by your supervisor, became abusive and threatened him with physical injury.'

Claimant, under the circumstances disclosed by the record, was required to obey the orders of his superior. He was not at liberty to decide what work his position involved nor to refuse to perform work when directed to do so. Any failure on his part to meet these requirements would make him subject to being disciplined. If any of his rights were transgressed by reason of his obeying the orders given, his relief therefrom was by the method which the parties' affective agreement provides for that purpose.

There was evidence adduced at the hearing which supports the company's findings of guilt and, in view thereof, the company was not capricious, arbitrary or unjust in making its decision.

The record discloses that claimant not only refused to perform the work, when his superior directed him to do it, but was very abusive and threatened physical injury in doing so. In view of these facts and claimant's past record, which it was proper for the company to consider when it imposed discipline, we do not find the penalty imposed to be unreasonable. See Awards 1261 and 1367 of this Division."

In view of the facts in this case, which are not in dispute, and the principles so oftentimes expressed by this Division, this carrier must not be required to retain these claimants in its service. The carrier is also of the view the organization representatives and the national officers should be reprimanded for their actions in this case; the local chairmen for advising these claimants to be insubordinate and the national officers for progressing this case to your Board under the circumstances, which we believe must be regarded as upholding the action taken by the organization representatives at the lower level on the property.

ARTICLE V—AGREEMENT OF AUGUST 21, 1954

The attention of your Board is respectfully directed to part 2 of the claim of System Federation No. 2 in this submission. Part 2 reads as follows:

"2. That on May 11, 1955, the employes representative appealed to the highest representative of the Carrier, Mr. T. Short, Chief Personnel Officer, and he did not answer the appeal until July 14, 1955, which is in direct violation of Article 5 of the August 21, 1954 agreement."

By reason of the questions raised by part 2 of the federation's claim, carrier believes some further discussion is warranted.

If we correctly understand the matter, the organization has taken the position the carrier is in violation of Article V of the agreement of August 21, 1954 because its letter dated July 14, 1955 was dated more than sixty (60) days subsequent to Federation President Hawley's letter of May 11, 1955. The carrier is not informed, however, of the contention of the federation concerning the effect said alleged violation of said Article V would have upon the request for the reinstatement of the claimants with compensation for all time lost.

In paragraph 7 of carrier's statement of facts we have quoted the correspondence between the parties concerning the request to return these Claimants to service. Although President Hawley, in his letter of April 29, 1955 addressed to Mr. Christy, referred to decision of Superintendent Campbell, there is no evidence the request for reinstatement of claimants was ever presented to Superintendent Campbell. Therefore, the "decision" referred

to could not have been in connection with a request for reinstatement with or without compensation for time lost.

Notwithstanding this dereliction on the part of the federation president, Mr. Christy gave his decision on May 6, 1955 declining to disturb the discipline administered the claimants.

On May 11, 1955, President Hawley wrote Chief Personnel Officer Short, his letter quoted in paragraph 7 of carrier's statement of facts, but it is not at all clear from this letter just what was the nature of the matters said to have been appealed. At any rate on May 16, 1955 the chief personnel officer acknowledged receipt of the letter, procured the files from Superintendent Campbell and Chief Mechanical Officer Christy, and after corresponding with Mr. G. M. Holtzman, assistant general manager, who had also been by-passed by President Hawley in progressing this matter, met Messrs. Hawley, Terhune and Martin in conference on June 9, 1955. During that conference reinstatement on a leniency basis was discussed in considerable detail and it was made abundantly clear to those present that—

> "—these young men can only be restored to service on a basis of leniency, and not then until such time as they demonstrate to the Master Mechanic and Superintendent of the Kansas City Terminal that they realize they did make a mistake by not carrying out the instructions issued to them."

It was hoped that the federation representatives would think the matter over, then go to Kansas City and get the claimants straightened out, following which the request for reinstatement would be discussed with Superintendent Campbell and Master Mechanic Daniel, who had been informed as to the only possible basis for disposition of the matter.

Insofar as the carrier is advised, the federation officers took no remedial action, although the carrier's confirmation in writing of its decision in conference was held in abeyance for that purpose. Thereafter, due to Assistant Chief Personnel Officer Smith's vacation intervening, confirmation letter decision was not written until July 14, 1955. It is this fact upon which the federation bases its contention there was a violation of Article V of the agreement of August 21, 1954.

On July 20, 1955, the federation president wrote the chief personnel officer, contending that the carrier had violated Article V of the agreement of August 21, 1954 and again requested that said apprentices be immediately restored to service with pay for all time lost.

The carrier's reply dated July 22, 1955 is also quoted in paragraph 7. carrier's statement of facts above, but the following paragraph is of particular significance:

> "After you wrote your letter of May 11, Mr. Smith discussed with you, Messrs. Terhune and Martin the matter of restoration of these two young apprentices to service and suggested that the men might be restored to service under the conditions as set forth in the letter of July 14. You should well remember your remarks in connection with that, and, furthermore, you were willing for these men to be restored to service without pay provided they were not required to go to the Master Mechanic in company with the Local Chairman and admit their errors. You were willing to admit their errors to Mr. Smith."

So the carrier believes that during the conference of June 9, 1955, the federation actually recognized the responsibility of the claimants for the action taken by the carrier in administering discipline and, to the federations' credit, realized the carrier could not tolerate such conduct from its employes; that the federation actually accepted the carrier's offer, except the requirement they "—demonstrate to the Master Mechanic—that they

realize they did make a mistake by not carrying out the instructions issued to them", which was distasteful because of certain personal feelings regarding the master mechanic. At any rate, the carrier's letter confirming the decision given to the federation in conference was delayed in the belief the claim had been changed to a request for leniency. A casual reading of Article V of the agreement of August 21, 1954 reveals that—

"6. This rule shall not apply to requests for leniency."

as clearly stated in paragraph 6 thereof.

To further substantiate carrier's belief that the federation officers held the view expressed above, on July 26, 1955, President Hawley replied to carrier's letter of July 22, in part as follows:

> "We have no desire to go into a lengthy correspondence with you as we think the record involved in this case stands by itself, and it is outstanding that the Carrier violated all Agreements and understandings, **however we do desire to meet with you to discuss your letter of July 22nd. Your setting an early date for conference will be very much appreciated."** (Emphasis supplied.)

(See paragraph 7 of carrier's statement of facts for entire letter of July 26, 1955.)

If the federation officers actually believed the carrier had violated Article V of the agreement of August 21, 1954, and this alleged violation obligated the carrier to reinstate claimants with seniority rights unimpaired with compensation for time lost, then their request for another conference to discuss the original request is tantamount to a waiver of the alleged violation.

On July 29, 1955, the assistant chief personnel officer wrote President Hawley as follows:

"St. Louis 3, Missouri
July 29, 1955
A-BS 360-2618
cc 360-1391-9

Mr. G. O. Hawley
President
System Federation No. 2
Room 408, York Hotel
St. Louis 2, Missouri

Dear Sir:

Your letter of July 26, 1955 ,concerning the case of Apprentices McClure and Williams.

Understand that you will be in the building one day next week for conference and I will try to see you and Mr. Martin at that time, per your request.

Yours truly,

(Signed) B. W. Smith"

The entire question was again discussed in conference between Mr. Smith and Mr. Hawley, at which time Mr. Hawley again objected to one of the conditions of the decision given in conference on June 9, 1955, confirmed by letter of July 14, 1955, to the effect that the claimants "—demonstrate to the Master Mechanic—that they realize they did make a mistake by not carrying out the instructions issued to them", as he did not want to humble himself and the claimants before Master Mechanic Daniel, al-

though he did not object to doing as requested insofar as Superintendent Campbell is concerned.

Following this conference, the matter was again discussed with Assistant General Manager Holtzmann by Assistant Chief Personnel Officer Smith, but no change was or could be made in the original decision made in conference on June 9, 1955, as set forth in the chief personnel officer's letter to President Hawley under date of July 14, 1955.

We believe it is conclusive that both parties recognized the request of the federation was changed to a request for leniency and that was the only basis upon which it was discussed. Accordingly, Article V is not applicable and was, of course, not violated.

The request for reinstatement and claim for compensation for time lost should 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 with 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.

This case involves two areas of dispute. In the first instance two claimants were terminated and now seek reinstatement; while in the second situation the organization claims a procedural violation of the agreement. We shall dispose of the cases in that order.

One claimant, a sheet metal worker apprentice, entered the service of the carrier on June 2, 1953 and was terminated on April 20, 1955 after completing less than half of his apprenticeship. The other claimant, an electrician apprentice, entered the service of the carrier November 20, 1953 and was terminated on April 20, 1955, having completed about one-fourth of his apprenticeship. Both claimants were discharged at the same time, the reason being given that they refused to comply with the instructions of the master mechanic to provide letter of explanation as to reasons why apprentice lessons were not turned in for the period February 15 to March 15, 1955. The record discloses that the claimants received verbal and written instructions from the master mechanic to furnish an explanation of their tardiness in the matter of the apprentice lessons and that both failed or refused to comply with the request. No plausible reason is advanced for failure to comply. The request was proper, reasonable and easily fulfilled; and it was understood by the claimants. A mere note of explanation would have been sufficient. Refusal to comply or to offer a plausible excuse amounts to insubordination. The claimants testified that they refused to comply on advice given to them by their local chairman, who had advised them to not furnish the master mechanic with a written statement of explanation. We don't think the advice was sound. We find nothing in the agreement authorizing the local chairman to issue such countermanding instructions. The claimants understood what they were doing and they assumed personal responsibility for their acts. We must conclude that the claimants are guilty of the charges preferred against them. They were insubordinate. They deliberately refused to comply with valid, understandable instructions given to them by their supervisor during the course of their employment. This Board has held in many previous awards that discharge is a proper penalty for insubordination. We find nothing in this case to alter that general rule. The claim will be denied.

Admittedly the carrier exceeded by some three (3) days the time limit of sixty (60) days within which it was to confirm in writing its decision.

The organization contends that because of this breach the carrier is obligated to reinstate the claimants. The purpose of such a rule is to keep claims from growing stale and to expedite the proceedings covered by the rule. We find no merit in the contention that because of a few days' delay in issuing a statement the carrier has lost the right to have discipline upheld. There is no showing in the record that the claimants were injured by this brief delay. Most certainly the parties should attempt to stay within time limitations prescribed for procedural requirements, but the failure to do so cannot otherwise void the proper exercise of disciplinary control. Agreements of this kind regulating the employer-employe relationship must be given a reasonable, workable construction and not construed so narrowly as to defeat justice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2466

The claim of the employes is:

1. That under the current agreement Sheet Metal Worker Apprentice T. M. Williams and Electrician Apprentice M. R. McClure, and employed as such in the Kansas City Shops, were improperly removed from service and are entitled to reinstatement with seniority unimpaired and compensation for time lost.

2. That on May 11, 1955, the employes representative appealed to the highest representative of the carrier, Mr. T. Short, Chief Personnel Officer, and he did not answer the appeal until July 14, 1955, which is in direct violation of Article 5 of the August 21, 1954 Agreement.

The majority states:

> "Admittedly the carrier exceeded by some three (3) days the time limit of sixty (60) days within which it was to confirm in writing its decision."

This erroneous conclusion of the majority is contrary to the language and intent of Article V of the August 21, 1954 agreement, the pertinent part of which provides:

> ". . . Should any such claims or grievances be disallowed, the carrier **shall,** within 60 days from the date same is filed, notify whoever files the claim or grievance in writing of the reasons for such disallowance. **If not so notified, the claim or grievance shall be allowed as presented. . . .**"

The record affirms the employes' contention that the carrier failed to answer the appeal of the employes within the time provided by Article V and waited a total of sixty-five (65) days before answering the appeal.

In Award 2370 the majority found:

> ". . . If, as here, no hearing is requested the supervisor (foreman) must render a written decision within 30 calendar days from the date on which he received the claim and, if he fails to

do so, the position of the employe shall be sustained. Meeks rendered no such decision. **It should be observed the provision that the claim 'shall be sustained' is contractual.**

Award: Claim sustained as it relates to St. Petersburg."

In Award 1519 the majority found:

"On resort to the calendar it becomes apparent from the foregoing statement that the claim was not filed with this Division within ninety days after the date of the decision of the carrier's final officer of appeal. . . . Therefore, in the face of the confronting facts and circumstances, all we can do is to hold that failure to file the claim with the Board within the time required by the agreement precluded its consideration and requires its dismissal.

Award: Case dismissed."

The record discloses that hearing with referee sitting as a member of the Division was held on February 5, 1957. The majority waited until June 5, 1957 to render an award.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink