

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)
ILLINOIS CENTRAL SYSTEM**

DISPUTE: CLAIM OF EMPLOYEES.—Request that Coal Passer A. T. Munier, Paducah, Kentucky, be reinstated and paid for time lost from August 2, 1935.

JOINT STATEMENT OF FACTS.—Coal Passer A. T. Munier, Paducah, Kentucky, was dismissed from the carrier's service, charged with insubordination in telephone conversation with his supervisor, E. D. Cardwell, chief engineer, about 8:50 P. M., on Friday night, July 26, 1935. He was given a hearing and dismissed on August 2, 1935.

POSITION OF EMPLOYEES.—Mr. A. T. Munier was discharged August 2, 1935, charged with insubordination during, presumably, a 'phone conversation.

The 'phone conversation was in compliance with Rule 37 of the current Firemen and Oilers' Agreement between the Illinois Central System and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, which reads as follows:

"In case an employe is unavoidably kept from work he will not be discriminated against; an employe detained from work on account of sickness or for any other good cause, shall notify his foreman as soon as possible."

The employe in this case complied with the rule and the foreman violated the rule. Employe stated that he would report for duty, notwithstanding the fact that he was not physically fit.

Prior to dismissal the employe was advised that he would be penalized by temporary suspension from service. When the employe requested that he be advised of cause for such action in writing as per Rule 10—

"Employes disciplined will be advised of the cause for such action in writing when requested. No employe will be dismissed without first being given a fair and impartial hearing. Employes, however, may be held out of service pending such hearing."

this was not done. The employe was advised by master mechanic that he would give him some time off, or actual dismissal, with an investigation. This clearly places the employe in the position of being convicted for an offense prior to his hearing, which is in violation of Rule 10 as quoted above.

The claim for reinstatement is being made under the provisions of Rule 15:

"If it has been found that an employe has been unjustly discharged or held out of service pending an investigation, such employe shall be reinstated with full pay for all time lost."

Inasmuch as the employe was advised that he would be discharged prior to the hearing, it is the contention of the employes that the employe be reinstated and paid for time lost due to being unjustly discharged.

POSITION OF CARRIER.—As indicated in the "Joint Statement of Facts," Mr. Munier was dismissed August 2, 1935, for insubordination in telephone conversation with his supervisor on the night of July 26. His case was handled in conformity with the provisions of the schedule agreement governing the application of discipline. Rules 10 and 12 read:

"Rule 10. Employes disciplined will be advised of the cause for such action in writing when requested. No employe will be dismissed without first being given a fair and impartial hearing. Employes, however, may be held out of service pending such hearing."

"Rule 12. If stenographic report of investigation is taken, the aggrieved employe or his representative will be furnished a copy."

Mr. Munier was born June 22, 1912, entered service as laborer in the power house at Paducah on December 11, 1933, and was dismissed on August 2, 1935.

It will be noted that Master Mechanic Royal called Mr. Munier to his office to talk about the case, and Mr. Munier admitted that he hung up the telephone receiver without waiting for his supervisor to get through talking to him. The verbatim statements also show that Mr. Royal offered to talk to him about the case, pointing out the error of his ways, and close it with a short suspension. Mr. Munier refused the offer, and insisted upon an investigation. The investigation was held. Mr. Munier's attitude in conducting the telephone conversation with his supervisor was grossly discourteous and insubordinate. During the conversation Mr. Munier claimed to be ill. His right to be absent on that account was not questioned, but when his supervisor questioned him about the nature of his illness, Mr. Munier hung up the telephone receiver in a very offensive manner, and apparently lost his temper.

When the case was later handled by the employes' representatives with the general superintendent of motive power and the undersigned, the employes' representative was told we would be willing to reinstate Munier, hoping he had learned his lesson, but we were not willing to pay him for time lost. The employes' representative stated Munier was not willing to close the case on this basis, and he would have to insist that Munier be reinstated and paid for all time lost.

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.

While it is disputed that the action of the employe involved constituted an act of insubordination, it is shown that management indicated a disposition from the beginning to apply discipline by suspension from the service for a short period.

AWARD

A. T. Munier, coal passer, Paducah, Kentucky, shall be reinstated. Claim for pay for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1936.