

Award No. 504

Docket No. 510

2-ACL-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the dismissal of Machinist A. C. Schuyler, Florence, S. C., effective October 29, 1939, was unjust in that such action failed to treat with the facts and circumstances involved; therefore, that as a result of an accord later reached between the aforesaid parties for disposition of Schuyler's claim for reinstatement he should, according to same, be reinstated and compensated for loss of time since February 15, 1940.

EMPLOYES' STATEMENT OF FACTS: On date of September 22, 1939, Machinist A. C. Schuyler, employed at Florence, S. C. since October 26, 1922, was advised in writing over the signature of Master Mechanic W. R. Witherspoon as follows:

"This is to advise you that you are charged with improperly performing your work on Sept. 13th in the machining and fitting a floating back and bushing for engine 464. You are also charged with improperly performing your work on Sept. 20th in machining and fitting back and main rod brass for engine 354.

An investigation will be held in this office at 4:30 P. M., Monday, September 25th, at which time you are requested to be present.

You may, if you so desire, have your representative present at this investigation."

Mr. Schuyler was absent from duty on September 25; however, he reported at the shops for investigation according to the above request. He was advised by the local chairman that the master mechanic had decided to postpone the investigation on account of his information that Schuyler had had several teeth extracted that day. On advice of his physician that all of his teeth, fourteen in all, be extracted, Mr. Schuyler remained off duty until September 30, 1939, when he returned to work. The investigation previously scheduled for September 25, was finally held on date of October 17, 1939. He was orally advised by Roundhouse Foreman W. A. Fetner on the afternoon of October 28, 1939, that it was the instructions of Superintendent Motive Power C. S. Taylor that he, Mr. Fetner, relieve Schuyler of his passes and dismiss him from service.

Mr. Schuyler initiated a claim for reinstatement which when handled up to the general superintendent motive power resulted in an understanding being reached between him and the general chairman that the case be re-

Mr. L. C. Hendrix, General Chairman of the International Association of Machinists, progressed this case to this office, and in the meeting today states that Mr. Schuyler's health has been affected by bad teeth, several of which have been removed and his health improved, and requests reinstatement, without back pay, if and when Mr. Witherspoon, Master Mechanic, and a committee concur that Schuyler has improved, and is capable of being reinstated, and in the event he is not, the committee is to make recommendation as to what work he is fit to do.

The committee is to be composed of Mr. Witherspoon, the Local Chairman of the Machinists, Mr. Johnson, one machinist selected by him and one machinist selected by Mr. Witherspoon.

Will you kindly have Mr. Witherspoon carry out the provisions of this attempted settlement and advise whether or not Schuyler is capable of returning to work as a machinist, or at what work he might be assigned if vacancy occurs at that point, or under Mr. Witherspoon's jurisdiction.

Yours truly,

(S) F. S. Robbins,
General Supt. Motive Power."

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.

The record shows that the superintendent of motive power and the general chairman, after discussing the A. C. Schuyler case, agreed to refer the matter to a committee for final disposition as evidenced by letter dated February 1, 1940, signed by Mr. Robbins.

The committee thus selected disposed of the matter as evidenced by their signed report dated February 9, 1940, wherein they recommended reinstatement to his former position, which recommendation was not acted upon as agreed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of August, 1940.