

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
TEXAS & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Request for reinstatement of Machinist A. L. Miner to service with the Texas and Pacific Railway Company at Fort Worth, Texas, with pay for time lost since date of dismissal August 1, 1933.

POSITION OF EMPLOYEES.—That Miner's case is now pending and unadjusted.

That Miner's case was disposed of contrary to definite instructions to his agents. That Miner's agents exceeded their authority, and that when they exceeded their authority the relationship of principal and agent was destroyed.

That Miner was wrongfully discharged.

POSITION OF CARRIER.—That Miner's case is not pending and unadjusted.

That Miner's agents had full authority to act for him under the agreement and were so authorized to do. That he can not rescind, modify, or change the authority given them by the agreement.

That Miner was rightfully discharged for incompetency.

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.

FURTHER FINDINGS.—A. L. Miner, machinist at Fort Worth, Texas, was dismissed from service August 15, 1933, for alleged incompetency. Thereafter Miner took the necessary steps to adjust his case in accordance with Rule 36, Section (a) and (b), of the agreement between the carrier and the Association of Mechanical Department Employees.

The authority given by Miner to representatives of the Association of Mechanical Department Employees to settle his case was definitely limited and qualified. That his agents disregarded the limitations and qualifications placed upon their right to act for Miner. That this fact was known to the representatives of the management. That when the agents and management proceeded to dispose of Miner's rights in violation of the known limitations and qualifications placed upon the agents' authority, they destroyed the authority which Miner had given to his agents, and their decision is of no effect.

That the case is pending and unadjusted within the meaning of the language of paragraph (i) of Section Three of the Railway Labor Act as amended June 21, 1934.

This case does not fall within that class of cases where settlements of disputes between the employes and employers are always handled by agents or representatives of the employes.

The capacity of the representative of a labor organization in an ordinary case to act for employes and to bind them is not here questioned.

That on the entire record and on all the evidence, the Second Division of the Adjustment Board finds that Miner's discharge was wrongful and without just cause.

That the evidence relating to the merits must be considered in its entirety, and technical common law objections to such evidence have no place before a tribunal such as this Board.

That the burden of showing that Miner was rightfully discharged rests upon the party asserting it and was not sustained by the record or the evidence in this case. That a discussion of the lengthy record and of the charges and counter-charges therein contained could serve no useful purpose at this time.

AWARD

That Machinist A. L. Miner be reinstated with pay for time lost, and his seniority restored.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 13th day of February, 1936.