

Award No. 264

Docket No. 264

2-ACL-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.
(Machinists)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Request for reinstatement of Machinist T. L. Fulford to service with the Atlantic Coast Line Railroad Company at Waycross, Georgia, with original seniority date of January 1, 1924, and with pay for all time lost, due to being improperly furloughed from service December 1, 1933, while junior men were retained.

EMPLOYEES' STATEMENT OF FACTS: T. L. Fulford entered the service of the Atlantic Coast Line Railroad Company at Waycross, Georgia, on date of October 18, 1922, as step-rate machinist, establishing mechanic's seniority on date of January 1, 1924. In September, 1924, he secured a leave of absence through application to Mr. C. A. White, master mechanic. Mr. Fulford, in applying for his leave of absence, stated to Master Mechanic White that, as a matter of convenience, he would appreciate payment of all money due him before his leave became effective. Mr. White advised Mr. Fulford that he would make such arrangement at the time-keeper's office, and in accordance with this arrangement, Mr. Fulford called at the time-keeper's office some two or three days later and received money due him in a check. It was known to the company officials that Mr. Fulford was getting married following his leave from service and that he held passes, trip and foreign, for wife and himself from Waycross, Georgia, to Washington, D. C. These passes were not requested (which fact will support the contention of the employes that Mr. Fulford did not quit the service as now claimed by management). Mr. Fulford, for some time prior to effective date of his leave of absence, had been receiving treatment for a bone felon at the company hospital, which treatment was continued after he had secured his leave. Mr. Fulford was out of the service for a period of five months and when returning for service on date of February 1, 1925, did so in accordance with arrangements that were made when his leave was granted, being advised through his brother, Mr. J. W. Fulford, who was employed at Waycross shops as machinist, that it was the request of Master Mechanic White that he report for duty.

Mr. Fulford returned to the service in February, 1925, and exercised his original seniority date of January 1, 1924, until December 1, 1933, a period

OPINION OF THE DIVISION: The issue in this case is the proper seniority date for Machinist Fulford at Waycross, Georgia. Machinist Fulford was originally employed January 21, 1924. Fulford left the service of the carrier in August, 1924, and engaged in other work. He was re-employed by the carrier January 26, 1925. The point to be decided is whether the break in employment from August 28, 1924, to January 26, 1925, made Fulford's seniority date from January 26, 1925, instead of January 1, 1924.

The carrier contends that this Division has no jurisdiction because the case had been settled on the property and was not one pending and unadjusted at the time the Act took effect. The contention is not sustained by the facts in the docket. The Division has jurisdiction over this matter as a grievance which had not been adjusted by the parties.

The employes contend that the seniority date had been carried continuously on the records of the carrier as of January 1, 1924, and that the change therein would be an arbitrary act of the carrier.

The facts in the docket disclose that Fulford did leave the employment of the company and did engage in other business. His name was carried on the seniority roll as of January 1, 1924, but when the matter became an issue in a reduction in force, the facts disclosed that Fulford's proper seniority date was January 26, 1925. The Division has had before it similar issues and has decided that when a seniority date is in question the facts decide the issue. In Award No. 11, the exact issues were before the Division, and the Division held that the date of re-employment prevailed.

The proper date of seniority for Machinist Fulford is January 26, 1925.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of October, 1938.