

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYEES.—Request for reinstatement of J. T. Ellis to service with the Florida East Coast Railway at Jacksonville, Florida, Bowden shops, with seniority unimpaired and pay for time lost since he was laid off February 23, 1933.

EMPLOYEES' STATEMENT OF FACTS.—Mr. J. T. Ellis was employed by the Florida East Coast Railway at Jacksonville, as a machinist, December 31, 1924. He remained in service as a machinist except for a period between May 6, 1931, and January 2, 1932, when he was subject to be cut off in a reduction of the forces and during which time, he accepted a position as a helper. He was called back as a machinist January 2, 1932, and continued with the company as a machinist until he was again cut off February 23, 1933.

When Mr. Ellis was cut off he protested to Mr. Little, the engine house foreman at the Bowden shops, and pointed out that Mr. Louis Leuders, who was brought from New Smyrna as a foreman in 1926 and demoted to machinist in 1931, was younger on the list. Mr. Little insisted at that time that once a man was a foreman on the Florida East Coast Railway he always held seniority over all mechanics. There was no rule to that effect in the agreement, but Mr. Little would not adjust the matter.

POSITION OF EMPLOYEES.—That Mr. J. T. Ellis, machinist, Bowden shops, Jacksonville, Florida, was unjustly furloughed because another machinist, junior to him in point of seniority, was retained in the service. It is further contended that Ellis was discriminated against by certain officials of the railway company and efforts were made to permanently remove him from the service without proper cause.

POSITION OF CARRIER.—It will be noted that no complaint was made or is now being made that Mr. Ellis was unjustly laid off on May 6, 1931, when Mr. Leuders was demoted from foreman to machinist. The railway takes the position that if the committee had or has no objections to Mr. Leuders being reduced from the position of foreman to that of a machinist and in so doing displacing Mr. Ellis on May 6, 1931, it cannot consistently maintain the position that in a second instance Mr. Leuders shall be denied the right of being retained over Mr. Ellis when the force was reduced February 23, 1933.

It is the position of the railway that at that time it was in no way bound by any agreement between the railway and its employees. While it is true there was an agreement made between the railway and its employees on July 1, 1922, the railway does not recognize this agreement as being in effect in June, 1931, when this assignment of work was made. The agreement dated July 1, 1922, was negotiated with a committee representing the Florida East Coast Railway Shop Employees' Association, which had been organized immediately after the calling of the strike of shopmen on July 1, 1922. This association, while active for some time, gradually disintegrated and after about 1925, the railway had no contact with it. On January 14, 1932, the railway endeavored to establish contact with this organization at various points on the railway in order to notify the employees of a proposed reduction in wages, but it was unable to find any committees representing this organization. The foremen at various points on the railway therefore called their men together and discussed the matter of wage reduction before this reduction was put into effect. It is the position of the railway, therefore, that inasmuch as the or-

ganization with which it had negotiated an agreement had ceased to exist, the agreement itself had also lapsed and the railway was in no way bound to carry out provisions of that agreement. However, if it is contended that this agreement was in effect in June, 1931, the reduction in the force of machinists on February 23, 1933, was handled in accordance with Rule 4 (d) and 4 (e) of the agreement dated July 1, 1922, which are quoted below:

"When it becomes necessary to reduce expenses the hours may be reduced to forty (40) per week, before reducing the force.

"When the force is reduced, seniority—as per Rule 4 (a) will govern, the men affected to take the rate of the job to which are assigned.

"Forty-eight (48) hours' notice will be given before hours are reduced.

"If the force is to be reduced, four (4) days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.

"In the restoration of forces, senior men laid off will be given preference in returning to the service, if available within a reasonable time, and shall be returned to their former positions if possible; regular hours to be re-established prior to any additional increase in force.

"The Local Committees will be furnished a list of men to be restored to service.

"In the reduction of force, the ratio of apprentices shall be maintained.

"When reducing forces, if men are needed at any other point, they will be given consideration for transfer to the nearest point, with privilege of returning to home station when the force is increased; such transfer to be made without expense to the company.

"Employees applying for transfer to fill car inspection vacancies must pass satisfactory examination on A. R. A. Rules, proficiency and seniority to govern.

"Where proficiency is equal, seniority will prevail, and will be applied so as not to cause undue impairment of the service."

As Mr. Leuders, not only by his record but his work, had demonstrated that he was more proficient than Mr. Ellis, the foreman in charge would have been entirely justified in his action even if these rules had been in effect at that time.

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.

Evidence was not produced to prove that J. T. Ellis is less proficient in his line of work than L. Leuders.

Evidence presented shows J. T. Ellis to be senior to L. Leuders as a machinist.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

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