

Award No. 267

Docket No. 270

2-FEC-MA-'38

**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: That F. W. McLean, machinist, be reinstated to the service at St. Augustine, Florida, with his seniority unimpaired and paid for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Machinist F. W. McLean entered the service of the Florida East Coast Railway at Key West, Florida, on June 27, 1920, as general machinist.

He was appointed division foreman, August 1, 1920, and worked as such until September 1, 1931, when he was demoted to assistant foreman and transferred from Key West, Florida, to Jacksonville, Florida, Bowden shop; worked as such until January 15, 1932, when he was again transferred and demoted to machinist at St. Augustine shops, where he worked as machinist until April 1, 1932, when he was advised by Mr. Wilson, superintendent of shops, that he (Mr. Wilson) had been ordered to get rid of him (Mr. McLean).

Mr. McLean was denied the opportunity of exercising his rights under Article 8 of the then existing agreement on the Florida East Coast Railway.

POSITION OF EMPLOYEES: Article 8 reads:

"No employe shall be disciplined without a fair hearing by a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he is entitled to be apprised of the precise charge against him; he shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his choosing. If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him."

We claim Mr. F. W. McLean was discriminated against by certain officials of the Florida East Coast Railway because of certain things that happened dating back for quite a period of time prior to his actual discharge. Mr. McLean stood good for liquor bills of P. H. Conniff, then an official of the company. (See Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, incl.)

Mr. McLean was removed from his position of division foreman on September 1, 1931, and made assistant foreman at Jacksonville, Florida, and prior to his actually being sent to Jacksonville, Florida, Mr. McLean had the question of his demotion up with Superintendent of Motive Power Robbins. (See Exhibits 11 and 12.)

ceived if he had worked the first and second half of April, 1932, as machinist, and the case was considered closed when he accepted the checks.

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.

On April 1, 1932, Machinist F. W. McLean was dismissed from the service of the Florida East Coast Railway at St. Augustine, Florida, on account of alleged unsatisfactory work.

Article No. 8 of the agreement in force at the time of McLean's dismissal reads as follows:

"No employe shall be disciplined without a fair hearing by a designated officer of the carrier, suspension in proper cases, shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he is entitled to be apprized of the precise charge against him; he shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his choosing. If the judgment shall be in his favor, he shall be compensated for the wage loss, if any suffered by him."

The facts of record show that McLean was not given a hearing in accordance with the provisions of the above quoted rule; also that he appealed to various representatives of the carrier who were in authority over his immediate superior, but to no avail.

The language of Article No. 8 is plain and its proper application clear. The carrier violated its agreed-to provisions.

AWARD

Machinist F. W. McLean shall be reinstated with seniority unimpaired and paid for wage loss.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1938.