

Award No. 287

Docket No. 288

2-FEC-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 69, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYES: Claim for pay for Carmen R. L. Thompson and John Fleming for all time lost between December 11, 1937, and April 15, 1938, account management hiring Alton Godwin, Charlie Matthews and W. R. Farnell at Buena Vista in violation of settlement of previous grievance of Messrs. R. L. Thompson and John Fleming; also Rule 17 of the agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to September 2, 1935, R. L. Thompson and John Fleming were employed in the car shops at Key West, Florida, and on September 2, 1935, the railway's line running into Key West was so badly damaged by hurricane that the line from Florida City to Key West was abandoned, which caused the abolishment of all shopmen's positions at Key West.

Messrs. Thompson and Fleming exercised their seniority at Miller shops, located at St. Augustine, which was done in accordance with the provisions of the agreement in effect at the time, but on their arrival at St. Augustine, were informed that the master car builder's son, who is now supervisor at Buena Vista, had made the statement that management was not going to permit them to qualify at St. Augustine. When the men reported for work on the morning of November 11, 1935, management's intention to disqualify them was further manifest by the men whom they were supposed to displace reporting for work also, which made Mr. Thompson and Mr. Fleming somewhat nervous, and Mr. Fleming returned to his room without attempting to qualify under such circumstances, and Mr. Thompson remained on the job trying his best to satisfy the foreman, but after three (3) days, was laid off without an investigation. A few days later, which was about November 20, 1935, the matter was handled formally with the superintendent motive power and machinery by the general chairman, assisted by Mr. F. D. Laudemann, representing the Railway Employees' Department, and agreement reached whereby these men would not be considered as either discharged or resigned, and that they would be given the next vacancy anywhere on the system.

POSITION OF EMPLOYES: John Fleming entered the service of the Florida East Coast Railway at Key West, Florida, on June 12, 1923, and R. L. Thompson entered service at Key West, Florida, on August 6, 1923, both being classified as carmen, and remained in the service until the Labor Day hurricane of 1935 caused the abolishment of their positions. As stated in the employees' statement of facts, these men exercised their seniority on positions held by two men at Miller shops where every conceivable effort was made to prevent them from qualifying.

It is the position of the employees that management never intended from the beginning to give these men the rights accorded them under the agree-

and machinery. He did not communicate with any supervisor or official of the railway until May 8, 1938, when he wrote Mr. R. B. Hunt, acting superintendent motive power and machinery (Exhibit 9).

POSITION OF CARRIER: John Fleming forfeited all rights he formerly held with the Florida East Coast Railway when he walked away from the job that he had bid in without communicating in any way with the supervisor directly in charge of the work, with the general car foreman in charge of Miller shops car department, or with the superintendent motive power and machinery, and no claim was made by Mr. McFarland in his letter of April 25, 1936, to Mr. Robbins (Exhibit 20), or in any subsequent correspondence, and in Mr. Robbins' letter to Mr. McFarland dated November 30, 1936, (Exhibit 32), the last paragraph shows that the fulfillment of Award No. 84 of the National Railroad Adjustment Board completed all cases of seniority that were filed against the seniority roster posted December 1, 1935.

The letter from Mr. O. A. McFarland, general chairman of carmen, dated April 25, 1936 (Exhibit 20), listed R. L. Thompson in the list that he was contending had seniority rights at St. Augustine. In all subsequent correspondence, he dropped R. L. Thompson from his list, and R. L. Thompson does not appear in any of the correspondence up to and including the claim that was made to the National Railroad Adjustment Board, Second Division, and settled under Award No. 84, Docket No. 88, and it can only be assumed that Mr. McFarland eliminated the claim of R. L. Thompson for reasons that he does not set forth.

When R. L. Thompson failed to qualify on the job he bid in under Rule 4-A of the agreement in effect at that time, and refused to accept a job on which he could qualify, he forfeited all rights previously held with the Florida East Coast Railway.

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 facts of record show there was an understanding between carrier and employe representatives such as would restore the seniority rights of Carman R. L. Thompson and John Fleming, and give these men employment at some point on the Florida East Coast Railway when the opportunity presented itself.

The record is not clear as to just what obligation rested upon either party as to how they were to watch for and take advantage of the opportunity afforded.

Carman R. L. Thompson, it is known, is now deceased.

AWARD

Carman John Fleming shall be reinstated with seniority unimpaired and given employment in accordance with such seniority. Claim for compensation for time lost if any, is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of December, 1938.