

Award No. 433

Docket No. 467

2-ACL-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the proper date of seniority to which Machinist T. L. Fulford, Waycross, Georgia, shops is entitled, was an issue distinctly determined in referee Award No. 264, Docket No. 264, of the Second Division of the National Railroad Adjustment Board, October 4, 1938; therefore, the Atlantic Coast Line Railroad Company should recognize the right of Fulford to exercise such date (January 26, 1925) for employment.

EMPLOYEES' STATEMENT OF FACTS: The previous claim of employees as decided in the above referred to award involved the controversial question of whether or not Machinist Fulford was on leave of absence from his employment at Waycross, Georgia, from August 28, 1924, until returning to service January 26, 1925. On October 4, 1938, the Second Division of the National Railroad Adjustment Board, consisting of the regular members and in addition Referee John A. Lapp, rendered an Award No. 264, denying the claim of the employees "that Machinist T. L. Fulford should be restored to his employment with a seniority date of January 1, 1924, with pay for all time lost due to being improperly furloughed from service December 1, 1933, while junior men were retained."

This decision adversely disposed of the claim of the employees that Fulford was on a leave of absence for a period of five months as of between August 28, 1924, until January 26, 1925, and, therefore, entitled to compensation due to being furloughed as of December 1, 1933, when his original seniority date which had continued to prevail, notwithstanding the five months' absence from service, was changed to conform with an entry date of February 1, 1925; such date being subsequent to application for re-employment as of January 26, 1925.

In accepting jurisdiction to determine the issues in dispute as in Award No. 264, it was the opinion of the Division that the issue for determination was the proper seniority date for Machinist Fulford. The case was thus determined—in accordance with the contention of the carrier, that by reason of Fulford leaving the service of his own volition on August 28, 1924, and engaging in other business without provision being made therefor, he forfeited all rights subsequent to his original employment (October 18, 1922). It was further determined, however, that the proper date of seniority to which Fulford was entitled is January 26, 1925, the date of his re-employment at termination of the five months he was out of service.

Company as to seniority protest of F. B. Lee, car inspector, Waycross, Georgia; this agreement shows the well-understood method of figuring an employee's correct seniority date.

Mr. Fulford was cut off in reduction of force in line with his seniority on December 3, 1933, and has not been in the employ of the carrier since that date. His seniority, therefore, was forfeited in accordance with the practice at that time and also by the fourth paragraph of Rule 16 of a later agreement, dated December 1, 1935, between the carrier and the employees of the mechanical department. First part of paragraph four reads as follows:

"In restoring forces, laid off men will be returned to the service insofar as practicable in the order of their seniority, provided this is done within a period of twelve (12) months; otherwise seniority is forfeited * * *"

The carrier, therefore, contends that the seniority of Machinist T. L. Fulford has lapsed, and that he has no further valid claims for employment, and respectfully asks the Board to dismiss this claim.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Second Division reached the conclusion in disposing of Docket No. 264, that Machinist T. L. Fulford's seniority date should be as of January 26, 1925.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1940.