

Award No. 531

Docket No. 516

2-ACL-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Car Inspectors T. P. Waters and L. W. Freeman, Tampa, Florida, be reinstated with seniority unimpaired and compensated for all time lost as a result of being unjustly removed from service on alleged charges of insubordination.

EMPLOYES' STATEMENT OF FACTS: Car Inspectors T. P. Waters and L. W. Freeman have been in the employment of the Atlantic Coast Line Railroad for approximately thirty years each. Waters' service has been continuous, whereas there is a break of three months and twenty days in 1922 in the service of Freeman. On January 6, 1940, both Freeman and Waters received notice signed by Mr. O. W. Tichenor, Assistant Car Foreman, with copy to J. H. Jenkins, local chairman of the carmen, citing them for investigation in connection with the inspection of FGEX car No. 25712 account of broken yoke rivet at "A" end of car; investigation to be held at 3:40 P. M., Monday, January 8. At the appointed time, 3:40 P. M., January 8, Waters and Freeman, having completed their eight hours' service at 3:30 P. M., and having checked out for the day, reported to Mr. Tichenor's office for the investigation; Jenkins, their representative, reporting immediately thereafter. Mr. Tichenor proceeded with the investigation of T. P. Waters, and at 4:00 o'clock this investigation had not been completed. After the shop whistle blew for 4:00 o'clock, Jenkins, the local chairman, advised Mr. Tichenor that it was time for him to check out and that he, Mr. Tichenor, could notify him when he wished to continue the investigation, to which Mr. Tichenor replied that he would advise him when the investigation would be resumed, adding that it would not take long to complete Waters' investigation if he (Jenkins) would do so. Jenkins objected to this, calling Mr. Tichenor's attention to the fact that they had not started the investigation of Freeman and that both might be finished when Freeman was given his investigation, whereupon Jenkins retired from the office.

Mr. Tichenor then advised Freeman that he would let him know the following day, Tuesday, then recalling that Freeman's regular day off was Tuesday, advised him that he would let him know Wednesday when the investigation would be given him.

Waters then stated to Mr. Tichenor that he would come in the following morning and sign his statement, whereupon Mr. Tichenor told Waters that

Inspector L. W. Freeman admits in the investigation for insubordination—"the reason the previous investigation was not completed was because our representative was gone. His work time was up."

It is very apparent that the investigation shows that there were ulterior motives in the local chairman, Jenkins, Car Inspectors Waters and Freeman leaving the investigation before it was finished, and is fully supported by statement made to Assistant Car Foreman Tichenor by Car Inspector Waters and to Gang Foreman Von Holdt by Car Inspector Freeman.

Further, in the handling of this case to the master mechanic by the local chairman, he requested reinstatement with compensation for time lost and was denied on February 26, 1940. On February 27, 1940, the local chairman requested reinstatement of these men without compensation. This request was denied. This shows that the local chairman realized the offense was a serious one.

Later, General Chairman J. F. Winters appealed to Mr. James Grant, superintendent motive power, requesting T. P. Waters and L. W. Freeman be reinstated with time claim withdrawn. Mr. Winters realized these men had done wrong and the offense was serious.

Car Inspectors Waters and Freeman were removed from the service for insubordination. Investigation given them and, under date of January 27, 1940, were notified of their dismissal for an act of insubordination; that is, leaving before completion of an investigation which was being conducted with them by Assistant Car Foreman Tichenor, which is insubordination.

Carrier contends discipline administered is not unjust or unfair. Therefore, respectfully requests the National Railroad Adjustment Board to deny 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 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.

Rule 23 of the agreement provides: "If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for the wages lost, if any, resulting from said suspension or dismissal."

Car Inspectors T. P. Waters and L. W. Freeman were removed from service on charges of insubordination. The record does not disclose any act of insubordination on the part of either of the employes.

AWARD

Car Inspectors T. P. Waters and L. W. Freeman will be reinstated with seniority rights unimpaired with pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1941.