

Award No. 688

Docket No. 649

2-ACL-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the dismissal of J. Z. McGahee, passenger car repairer, Rocky Mount, N. C., on June 24, 1935, was discriminatory and constituted unjust treatment for which claim is made that McGahee be reinstated with seniority rights unimpaired and compensated for all financial loss resulting therefrom.

EMPLOYEES' STATEMENT OF FACTS: J. Z. McGahee entered the service of the Atlantic Coast Line Railroad Company, as car repairer, in its Emerson shops, Rocky Mount, N. C., December 4, 1922.

McGahee was first employed in the freight car department and continued in this department for approximately three months. He was then transferred to passenger car department, where he continued to work until dismissed June 24, 1935, about 9:15 A. M.

On or about June 18, 1935, McGahee located a piece of four (4) inch channel iron which had been lying around in the shop for several days. Having need of just such material, he had his helper, Ben Rivenbark, cut off fifteen (15) inches, which he used to make a generator slack adjuster bracket for the car he was repairing.

On June 23, 1935, McGahee was advised by Mr. H. H. Zerbach that this four (4) inch channel iron was especially for use on cars being air conditioned. McGahee, therefore, removed the bracket from the car to which he had applied it. The following day it was welded by Henry E. Mintz, assisted by H. A. Smith, and was then used as originally intended.

On the morning of June 24, 1935, McGahee was called to the car foreman's office and given a joint investigation along with Coach Repairer A. F. Hobbs. McGahee called his helper, Ben G. Rivenbark, in the office as a witness in the investigation.

The investigation was captioned: "Investigation of Improper Use of Material Secured for Air Conditioning Coaches." See Exhibit A.

McGahee was not apprised in writing or otherwise of any charge placed against him before the investigation, as provided in Rule 22 of the then effective agreement which we quote in part:

J. F. WINTERS,
General Chairman,
Brotherhood Railway Carmen of America.

P. M. STEPHENS,
General Chairman,
International Brotherhood of Electrical Workers."

Therefore, with the signing of the agreement effective November 11, 1940, the case as presented did not exist as it was recognized it was closed.

Facts as stated and brought out in investigation and signed by A. F. Hobbs are submitted as Exhibit B.

Statement signed by M. L. Mouzon, J. E. Hammond and B. K. Burch submitted as Exhibit C.

Affidavit corroborating statement signed by—

A. F. Hobbs,	Exhibit "D"
J. E. Hammond,	" "E"
M. L. Mouzon,	" "F"
O. N. Monroe,	" "G"
H. J. C. Taylor,	" "H"
H. H. Zerbach,	" "I"

Therefore, we take the position—

FIRST: That Mr. McGahee was properly dismissed for his carelessness and indifference in cutting material which made it useless for the purpose for which it was purchased.

SECOND: That the failure of Mr. McGahee or representative to seek relief through board of adjustment set up by law, said board being in existence and functioning at the time Mr. McGahee's case was closed, the matter is not subject to jurisdiction of the National Railroad Adjustment Board. This position being further substantiated by Court Decision quoted above.

We feel the discipline administered is not unfair or unjust and request the National Railroad Adjustment 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 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 evidence of record supports the conclusion that Car Repairer J. Z. McGahee was dismissed from the service without adequate justification and in violation of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1942.