

Award No. 718

Docket No. 663

2-ACL-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That the dismissal of J. O. Gray, car inspector, Jacksonville, Florida, on May 26, 1935, was improper, unjust and in direct violation of the rules of the agreement. It is, therefore, claimed that he be reinstated with seniority unimpaired and compensated for all time lost from date of dismissal until restored to service.

EMPLOYEES' STATEMENT OF FACTS: J. O. Gray was employed at Savannah, Georgia, during the first week of August, 1922, by Mr. J. M. Fynch, supervisor of buildings, Second Division, Atlantic Coast Line Railroad Company. He was sent to Waycross, Georgia, where he reported to Mr. W. V. Watts, foreman, construction gang, engaged in repairing powerhouse smoke stack in Waycross shop.

Gray continued with Mr. Watts until about September 15, 1922, when he resigned of his own accord, and then went to Jacksonville, Florida, where he contacted Mr. O. H. Page, superintendent transportation, Third Division, and requested employment as car repairer at Jacksonville, Florida. Mr. Page sought to persuade Gray to accept work at Sanford or High Springs, but upon his refusal to do so, gave him a letter to Mr. L. E. Atwell, master mechanic at Jacksonville (Moncrief) shops. The letter stated that the bearer was an experienced car repairer, and was honored as pass on shuttle train operating between Jacksonville terminal station and Moncrief shops.

Gray reported to Mr. Atwell on September 21, 1922, and commenced work the next day, September 22, 1922, as car repairer; transferred to engine carpenter October 5, 1922, and continued in this capacity until July 1, 1930, when he was cut off in reduction of forces; qualified as car inspector and exercised his seniority as such August 12, 1930. He continued in this capacity until May 26, 1935, when he was dismissed from the service account of past record.

Gray was dismissed from the service without being given an investigation and without being apprised in writing of the precise charge against him, as provided in Rule 22 of the then effective agreement.

POSITION OF EMPLOYEES: It is the position of the employes that the dismissal of J. O. Gray, May 26, 1935, was an act of discrimination on the part of the carrier; that he was dismissed not on account of his past record, (see Exhibit D) but because he had discontinued his membership in the

of grievances or out of the interpretation or application of the agreement (effective December 1, 1933) between the Atlantic Coast Line Railroad Company and employes of the mechanical department represented by the Shopmen's Association of the Atlantic Coast Line Railroad Company, shown as Exhibit H.

It is further contended by the carrier that in the negotiation of the agreement with the employes in the mechanical department, operating through System Federation No. 42, and the railroad company, dated November 11, 1940, that the case of J. O. Gray was considered closed and only the cases of the seven men named in appendix 3, on page 47, would receive further consideration. This appendix reads as follows:

"AGREEMENT

In connection with the closing paragraph of the agreement between the Atlantic Coast Line Railroad Company and its employes, represented by System Federation No. 42, Railway Employes Department, A. F. of L., effective November 11th, 1940, the following claims or grievances are excepted from the terms of this agreement and investigation of the claim of these cases will be handled by the Company and the respective Chairmen:

T. Wainwright, Carman, Waycross
 V. J. Zittraurer, Carman, Waycross
 Cary Crosby, Carman, Waycross
 R. A. Brown, Carman, Florence
 A. L. Hertel, Electrician, So. Rocky Mount
 C. L. O'Neil, Electrician, So. Rocky Mount
 H. L. Breedlowe, Crane Operator, South Rocky Mount

F. W. Brown,
 General Manager
 Atlantic Coast Line Railroad Co.

J. F. Winters,
 President, System Federation No. 42,
 A. F. of L.

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

P. M. Stephens,
 General Chairman,
 International Brotherhood of
 Electrical Workers.

Wilmington, N. C., June 15th, 1938."

Carrier, therefore, claims that J. O. Gray willfully misrepresented his record when hired by the company, and was justly relieved from the service in May, 1935. They further claim that by not handling his case in accordance with the December 1, 1933, agreement, he forfeited any right he might have had for re-employment. Carrier further claims that appendix 3 of the November 11, 1940, agreement specifically exempted this case.

Carrier contends that the dismissal of Car Inspector J. O. Gray was justifiable and requests 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.

This record does not justify the allowance of the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.