

**Award No. 1297**

**Docket No. 1212**

**2-ACL-CM-'49**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.**

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**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 action of the carrier in the cancellation of the service rights of Car Repairer B. H. Simms about December 9, 1946, was not authorized by the terms of the current agreement, and that accordingly the carrier be ordered to restore this employe to his full earned seniority rights with compensation for all time lost retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** B. H. Simms, hereinafter referred to as the claimant, entered the service of the carrier as a carman apprentice on June 1, 1935, at Jacksonville, Florida, whereat he completed his apprenticeship and established seniority under the then existing agreement in the carmen's craft as a helper on June 1, 1935, and as a carman on September 24, 1937. The claimant actively continued in the service until January 5, 1944, when he was seriously injured on duty in wrecking service in the shop yards at Jacksonville, Florida. As result of said injuries sustained by the claimant, he was unable to resume his regular duties as a carman for approximately 18 months. However, the claimant sought the right to resume work, and, failing, he then, in company with his local chairman, appealed to the master mechanic on Saturday, December 7, 1946, as available and able to resume work on Monday, December 9, 1946, which is affirmed by the submitted copy of letter from Local Chairman Harris to Master Mechanic Cooper, dated December 7, 1946, identified as Exhibit A, and to date the claimant has been denied employment rights by the carrier.

The claimant has reasonably proved that he was able to resume his duties, which is affirmed by the submitted statements, identified as Exhibits B, B-1 and B-2, respectively signed by Doctor Lipscomb, December 13, 1946; by Doctor Schnauss, December 14, 1946, and by Doctor Chapman, January 23, 1947.

The claimant, through the undersigned, has made and put forth reasonable efforts to adjust this dispute on the property, but the carrier has declined to do so, and this is affirmed by the submitted copies of letters identified below:

Carrier contends there has been no violation of the agreement, and 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.

Simms' request to be permitted to return to service is diametrically opposed to, and is a complete reversal of the position taken by him in a damage suit filed against the carrier. Simms sued and was awarded a verdict of \$15,000.00 on the charge that he was totally and permanently disabled, and incapable of gainful activity. There is no reason to doubt that the particular disability suffered permanently incapacitated him from the resumption of his duties as a car repairer. The carrier, therefore, did not act unreasonably or arbitrarily in omitting Simms' name from the seniority roster soon after it delivered its check in full payment and satisfaction of the judgment rendered in his favor.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.