

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)
FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYEES.—The reinstatement of W. J. Davenport at St. Augustine shops with seniority unimpaired and pay for all time lost.

POSITION OF EMPLOYEES.—In November, 1935, at the time the new agreement between the Florida East Coast Railway and System Federation No. 69 was negotiated, Mr. W. J. Davenport was employed in the coach shop and carried on the carmen's seniority list with the date of July 15, 1926, and listed as patternmaker. Mr. Davenport had previously served his apprenticeship with the Florida East Coast Railway and completed same on July 8, 1927.

Under the rules at that time, if an apprentice was retained in the service after completing his apprenticeship, he was allowed one year seniority. During his apprenticeship as a patternmaker, he worked approximately one year of that time as coach carpenter. During the time of apprenticeship and all the time since, there has never been enough pattern work to keep a patternmaker steadily occupied as such, and he, as well as the patternmaker who had the job before Davenport, divided the time between pattern making and coach carpenter work. The division of the work was on about a 50% basis in each of the two classes and at one time Davenport worked steadily for two years as coach carpenter.

The new agreement made several changes in seniority due to the fact that under the company union agreement there was sub-department seniority, while the new agreement combined these several separate sub-department lists covering only four separate seniority lists in the carmen as follows:

"RULE 13. Patternmakers, Upholsterers, Painters, All other carmen."

The new rule had for its purpose consolidating separate seniority and not dividing it, as can be seen.

During the discussion of this rule, attention was called to the fact that they had some men who were dividing their time by working on work that naturally came under different classifications or crafts. The management specifically pointed out certain men classed as electricians, who do some machine work and they asked that we agree not to disturb such cases. We replied that we would not disturb such men except that if it was later found that a man was working a majority of his time on work of a different class than that under which he was carried, we would ask them to reclassify him, but we would not insist on removing the man that was accepted by the supt. motive power and machinery, and we naturally expected that principle to apply in any similar case.

On March 2, a notice was posted giving Mr. Davenport 2 days' notice that his job would be abolished as of March 4. The matter was taken up several times with the local foreman by the committee, who explained that it had always been the practice to allow Mr. Davenport to fill in his time as coach carpenter and that it was the position of the carmen that this practice should be continued as they considered Davenport as much of a coach carpenter as a patternmaker. They got no satisfaction.

On March 19, while the general committee was in conference with the supt. motive power and machinery, on the question of seniority, a representative of the Railway Employees' Department of the A. F. of L. was present and he called the supt. motive power and machinery's attention to the Davenport case, and also called his attention to the understanding that was agreed to in such cases, as previously explained, namely, "That the men would not be

"If the force is to be reduced, not less than three (3) working days' notice will be given the men affected before the reduction is made, and list will be furnished the local committees."

A bulletin was posted covering this reduction on March 2, 1936, also a letter was written on March 2, 1936, to Mr. Davenport, notifying him of the reduction, and a copy of the letter was sent to the secretary of the local protective board.

Mr. Davenport, being the only patternmaker, held no seniority rights in any other occupation, as under Rule 13 of the Agreement, he is carried on a separate seniority list. The portion of Rule 13 covering the separation of the employes into the various seniority lists is as follows:

"The seniority of employes in each Craft, and in each department covered by this agreement, shall be confined to the point employed, as follows:

Machinists.
Boilermakers.
Blacksmiths.
Sheet Metal Workers and Pipefitters.
Electrical Workers.

Four sub-divisions of the carmen, as follows:

Patternmakers.
Upholsterers.
Painters.
All other carmen.

"Helpers of each Craft to be carried on separate seniority lists."

Mr. Davenport, therefore, had no claim to seniority rights on any other position when he was laid off.

It is the position of the railway that the provisions of the agreement with System Federation No. 69 were fully carried out in discontinuing Mr. Davenport's position when there ceased to be any pattern work for him to do.

In the meeting which the supt. motive power and machinery had with the general committee on March 20, 1936, a representative of the Railway Employees' Department, A. F. of L., was present, and in the course of discussion of other matters for which the meeting was held, the representative brought up the matter of Mr. Davenport being laid off. The supt. motive power and machinery explained fully that this had been done because there was no pattern work for Mr. Davenport to do. However, the supt. motive power and machinery stated that the railway had recently authorized some air conditioning work which had increased the amount of work in the shop, and offered, on this account, to give Mr. Davenport employment on passenger car work. The representative and the committee accepted this offer and it was understood that the committee would notify Mr. Davenport to report for work. During this discussion neither the representative or any member of the committee said anything about the railway violating any rule in laying off Mr. Davenport, neither did they mention the matter of paying Mr. Davenport anything for the time he had lost, or of making any claim for such time. In other words, the representative and the committee accepted the offer of the supt. motive power and machinery without any reservations whatever. Five days after Mr. Davenport presented himself to the shop and declined to go to work unless he was paid for the time lost, the general chairman of System Federation No. 69 wrote to the supt. motive power and machinery, on March 29, 1936, in regard to Mr. Davenport's seniority rights and said nothing whatever about any claim for Mr. Davenport's lost time, and it was not until April 2 that this matter was brought up by the general chairman. As Mr. Davenport had made reservations in his application for employment that were not agreed to when the offer was made to put him back to work, the railway withdrew this offer.

It is the position of the railway that Mr. Davenport was laid off on March 4, 1936, in accordance with the agreement, and therefore was not entitled to pay for the time he had lost; that it violated no rule in the agreement by withdrawing its offer of employment for Mr. Davenport when he would not accept employment without making reservations that were not agreed to between the railway and the general committee.

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.

In view of the contents of the letter of supt. motive power and machinery to general car foreman, dated March 23, 1936, as quoted in the "Position of Employes", W. J. Davenport should have been reinstated in accordance therewith.

AWARD

W. J. Davenport shall be reinstated at St. Augustine Shops with seniority unimpaired and paid for all time lost after March 30, 1936.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

Attest: J. L. MINDLING

Secretary

Dated at Chicago, Illinois, this 8th day of July, 1936.