

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

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

DISPUTE: CLAIM OF EMPLOYEES.—Request for reinstatement of Charles Wagoner to service with Florida East Coast Railway at Jacksonville, Fla., Bowden shops, with seniority unimpaired and pay for time lost since September 1, 1931.

EMPLOYEES' STATEMENT OF FACTS.—Charles Wagoner started work for the Florida East Coast Railway at Jacksonville, Fla., September 26, 1922, as machinist, and worked on the same job as engine inspector for nine years, or until May 1, 1931. S. B. Little, enginehouse foreman, took Mr. Wagoner off his regular job and put Mr. Louis Leuders on Wagoner's job. Up to that time Mr. Leuders had been a foreman and had never worked at Jacksonville as a machinist. He came to Jacksonville as foreman about 1926. Mr. Wagoner protested this change to Foreman Little and Mr. Little took the position that once a man held a foreman's position on the Florida East Coast Railway, he thereafter had seniority over all other mechanics, and Mr. Little refused to make an adjustment.

Shortly after removing Wagoner from his regular job, Foreman Little posted a bulletin, stating that a man would be put on at Jacksonville Terminal as machinist and inspector. He told Mr. Wagoner that as he was the oldest man on the job, he wanted him to have the job and asked him to bid. Mr. Wagoner did bid on the job. After waiting some time on the new job, a second bulletin was posted on May 15, 1931, by Foreman Little, in which he stated that the job at Jacksonville Terminal (as previously posted) was canceled, but the next day, May 16, he put another machinist, H. C. French, who was younger than Wagoner, on the job. Mr. French was a personal friend of Mr. Little.

On June 29, Mr. Little posted another bulletin in which he stated that the night machinist job, on which Mr. Wagoner was working, would be abolished July 1, and also stated in that bulletin that Wagoner could roll the machinist (Watkins) in the machine shop.

Machinist Watkins was second oldest machinist on the seniority list, Wagoner being the oldest, but when Wagoner protested to Mr. Little that he did not want to roll the oldest man outside himself he got no satisfaction, so he went to St. Augustine to see Mr. Robbins, superintendent of motive power and machinery, who suggested that Wagoner take a leave of absence for sixty (60) days and in the meantime he would straighten things out. Mr. Wagoner took the leave, although he explained that he could not afford it, and when his leave expired he went to see Mr. Little, who refused to put him to work.

CARRIER'S STATEMENT OF FACTS.—On or about June 30, 1931, Machinist Charles Wagoner, who at that time was employed at Bowden enginehouse, applied for a leave of absence of five (5) days. Because of the condition of the work at hand at that time, the enginehouse foreman could not see his way clear to grant this leave of absence and Mr. Wagoner was so advised by his foreman. Mr. Wagoner, however, disregarded this advice and did not report for work on July 1, 1931. On July 6, 1931, Mr. Wagoner called on the superintendent of motive power and machinery at St. Augustine and made complaint that he had not been given proper consideration in the assignment of work, which had been brought about by a reduction in forces at Bowden, and stated that he would not work for the foreman at Bowden enginehouse. During the discussion he emphatically stated that he would not work at Bowden and asked

for work at another point. As he seemed very much perturbed, the superintendent of motive power and machinery suggested to Mr. Wagoner that he take a sixty (60) days' leave of absence in order that he might make an effort to find work elsewhere, which leave of absence Mr. Wagoner accepted. A few days before this leave of absence expired Mr. Wagoner again came to St. Augustine and interviewed the superintendent of motive power and machinery, and after his case was discussed he was advised to go back to Bowden and report for work, as Bowden was the only place on the railway where he held any rights to work. On August 30, 1931, Mr. Wagoner wrote the superintendent of motive power and machinery that he had called on the enginehouse foreman at Bowden, that he objected to returning to work at Bowden under the assignment given him by his foreman, and asked for another conference. This letter was answered on August 31, 1931, and Mr. Wagoner was advised that the matter of his returning to work was one to be handled between himself and his foreman, and that there was no reason for him to come to St. Augustine again. It afterwards developed that Mr. Wagoner had not called on his foreman, as he had claimed, and inasmuch as he did not return to work when his leave of absence expired, he was automatically marked out of service.

POSITION OF EMPLOYEES.—The employes contend that the carrier posted a bulletin that Mr. Wagoner's job was abolished, contrary to the provisions of the agreement, but that he would be allowed to "roll" Machinist Watkins. They further contend that immediately upon the expiration of the sixty-day leave of absence granted Mr. Wagoner, he applied to Foreman Little for his position, which position was denied him; and that upon appealing to the superintendent of motive power and machinery, he was advised that the matter would have to be handled entirely between Mr. Wagoner and Foreman Little and that appeals to higher officials would not change this decision.

They further contend that Mr. Wagoner had approximately 38 years of railroad service and therefore could not be considered as incompetent. They state in their submission that the foreman was trying to force Mr. Wagoner on a certain job (while his seniority gave him the right to another job), with the hopes that he could get something on him in order to fire him.

POSITION OF CARRIER.—It is the position of the railway that regardless of any disagreement Mr. Wagoner may have had with his foreman, or with anyone else, he was not justified in laying off without notifying his foreman after being refused a leave of absence or in not returning to work when his leave of absence granted by superintendent of motive power and machinery expired, and that the railway was within its rights in assuming that when he did not return at the end of his leave of absence he automatically severed his employment with the railway.

It was clearly indicated in conversation between superintendent of motive power and machinery and Mr. Wagoner that he, Mr. Wagoner, did not intend to return to work at Bowden enginehouse until the foreman changed the decision which had been made in regard to his assignment of work.

The alleged cause for Mr. Wagoner's complaint against the enginehouse foreman at Bowden was the change in his assignment of work. At that time it was necessary to reduce the force of machinists at Bowden and the foreman decided to cut off the youngest machinist whose assignment was in the machine shop. This assignment in the machine shop was then to be given to Mr. Wagoner. Mr. Wagoner was not the youngest machinist in the enginehouse; however, he was unable to lay off shoes and wedges or set valves, which is a part of the work done in this enginehouse and he had been responsible for several delays to trains on line of road caused by engine trouble due to his poor workmanship or carelessness. It was the foreman's opinion that best results could be obtained by setting up the assignment in this manner, and it is the position of the railway that he was within his rights.

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 an adjustment of forces there were some irregularities which affected Charles Wagoner, who, instead of accepting the position offered, elected not to work.

AWARD

Charles Wagoner shall be reinstated with seniority rights unimpaired, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: **J. L. MINDLING**
Secretary

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

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 71,
DOCKET NO. 73

NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Machinists)

NAME OF CARRIER: Florida East Coast Railway

Upon application of a representative of the employe involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

This Award provides that:

"Charles Wagoner shall be reinstated with seniority rights unimpaired, but without pay for time lost."

which in itself should need no interpretation, as it provides for one specific purpose and cannot be misconstrued.

Relative to questions in last paragraph of your letter:

"Will you not therefore please interpret the above award under the terms of sub-section (m) of section 3 of the Amended Railway Labor Act and advise me (1) the effective date of the reinstatement order and (2) if Wagoner is entitled to pay or an award from the carrier in view of its non-compliance after said reinstatement date."

(1) The effective date of reinstatement order was "on or before July 20, 1936."

(2) Will advise that this is not a question that can be passed upon by this Division of the National Railroad Adjustment Board, in this form, because any dispute which may arise in connection with this matter, subsequent to the date of Award No. 71 (July 8, 1936), must be handled in accordance with the provisions of the Amended Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1937.