

Award No. 231

Docket No. 245

2-FEC-FT-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

FLORIDA EAST COAST RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: Shall former Key West employes be given seniority from date of employment at Key West at points now employed or shall they be given seniority as of the date they began work at the point now employed?

JOINT STATEMENT OF FACTS: Labor Day, 1935, a hurricane so badly damaged the line of the Florida East Coast Railway between Florida City and Key West that the line was abandoned between Florida City and Key West, and the repair shop at Key West was permanently closed.

Rule 4-A of the Agreement, in effect at that time, reads as follows:

"Rule 4-A. SENIORITY LISTS.

The seniority of each employe in each Craft, and in each Department covered by this Agreement, shall be confined to the point employed, or payroll in each Department:

**MACHINISTS
BOILERMAKERS
BLACKSMITHS
SHEET METAL WORKERS AND PIPEFITTERS
ELECTRICAL WORKERS
CARMEN:**

Pattern Makers and Cabinet Makers
Coach Carpenters
Passenger Car Repairers
Planing Mill Men
Upholsterers
Painters
Car Inspectors
Freight Car Repairmen
Wrecking Crane Engineers and Locomotive Crane Operators

**MOULDERS AND COREMAKERS
APPRENTICES
SHOP HANDS
HELPERS
FUEL STATION OPERATORS
OIL PUMPERS
STATIONARY FIREMEN
ENGINE WATCHMEN
CRANE FIREMEN
ADVANCED LABOR
COMMON LABOR**

Seniority Lists will be open to inspection, and a copy furnished the Committee.

Any of the employes of the Crafts involved in this Agreement shall enjoy seniority rights from the date of employment. When positions are permanently abolished, such employes as are displaced will be allowed to exercise their seniority on positions held by the youngest men at other points."

On October 26, 1935, Mr. F. S. Robbins, at that time superintendent motive power and machinery, wrote Car Foreman J. D. Aldridge, at that time in charge of all forces at Key West, with copy to O. A. McFarland, at that time president of System Federation No. 69, A. F. of L., and to all supervisors in charge of repair points on the road, with list of the youngest men in all crafts affected who were working at that time at other points. In accordance with this letter and list of youngest men, the Key West employes were, at their request, moved to other points on the road.

POSITION OF EMPLOYES: It is the contention of the employes that Rule 4-A, as quoted in the joint statement of facts, was intended to take care of a situation such as has arisen in this case, and is evidenced by the fact that Rule 13 of the agreement now in force, is, in effect, a continuation of Rule 4-A of the agreement which was in effect at the time the Key West shops were abandoned. We contend that the rule is plain as to its intent and purpose and worded so plainly that it is very easily understood.

We submit that if these Key West employes had not carried their seniority with them to their respective points that they could not have displaced any one. Otherwise, it would have the effect of a junior employe displacing a senior employe, which is not consistent.

The carrier has contended that had it been intended that employes under such circumstances would carry their full seniority with them to their respective points, that the word "youngest" would not have been placed in the last sentence of the rule. We feel that these men carried their full seniority with them to the points now employed and that no rule or established procedure gives the management the right to add to or take from their seniority and it must be conceded that they either carried all or none to their respective points; certainly not barely enough to displace the youngest man at any given point or shop.

POSITION OF CARRIER: On October 16, 1933, a working agreement was made between the Florida East Coast Railway and the Florida East Coast Railway Shopmen's Union, which contained Rule 4-A, SENIORITY LISTS, as shown in the joint statement of facts. This agreement, as taken over by System Federation No. 69, A. F. of L., was in effect in October, 1935, when it was definitely decided to abandon Key West as a repair point. A new agreement was made with System Federation No. 69, A. F. of L., under date of November 19, 1935, in which rules covering seniority are as follows:

"Rule 13. SENIORITY.

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

Roosevelt Sands, car repairer helper, and Chester Johnson, car cleaner, chose to remain at Key West and made no claim for a job.

All agreements made between shop employes of the Florida East Coast Railway and the Florida East Coast Railway since the time the roads were turned back to the owners by the United States Railroad Administration, including the agreement in effect at the time of the abandonment of the Key West shops, and the agreement now in effect, provide that "The Seniority of Employes in each Craft and in each Department shall be confined to the point employed." This definitely establishes the principle of point seniority, and such principle has, at all times, been observed both by the railway company and by the employes. The only exception is electrical workers who, by reason of seasonal work in train lighting and repairs to equipment and power lines, asked for and received system seniority in the agreements of 1933-1934 and 1935.

If the men who were moved from Key West to other points on the road are given seniority at the points to which they moved as of the date they entered service at Key West, it gives them system seniority, and point seniority as prescribed by the rules of the agreement, and observed by the railway and by the employes for many years, would not mean anything.

One of the hazards of any employment is the possibility of having jobs abolished from any cause, and the rule covering permanent abolishment was made to give the men whose job was abolished a chance at another job, and was not meant to work a hardship on men of approximately the same length of service as the men whose jobs were abolished and had been subject to the same hazard during their term of employment.

If it had been the intent of the parties to this agreement that men from points that had been abolished should enjoy seniority at the point to which they were moved as of the date they commenced work at the point abolished, they would not have used the term "youngest man" in the wording of the agreement, as the exercise of their seniority would have automatically displaced the youngest man. Effort was made to get them placed on jobs they could hold, as is shown in letters to Mr. J. D. Aldridge dated November 2, 1935, from Mr. Robbins. (Exhibits 6 and 7.)

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 waived right of appearance at hearing thereon.

The exception provided in the seniority rule of the agreement, which involves the permanent abolishment of positions, supports the employes' contention.

AWARD

Former Key West shop employes who were transferred to other points, when shops at Key West were abandoned, will be given seniority at points now employed from date of employment at Key West shops.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1938.