

Award No. 265

Docket No. 265

2-ACL-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.
(Machinists)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Request for reinstatement of Machinist Hugh Salter to service with Atlantic Coast Line Railroad Company at Waycross, Georgia, shops, with original seniority date of March 1, 1923, and pay for time lost since removal from service January 6, 1934.

EMPLOYEES' STATEMENT OF FACTS: Hugh Salter entered service of Atlantic Coast Line Railroad Company at Waycross, Georgia, September 23, 1922, as machinist helper. Established machinist's seniority on date of March 1, 1923, which date was at completion of fifty per cent (50%) of step-rate time, commencing September 18, 1922, and completed July 1, 1923. Mr. Salter was included among employees solicited for transfer to the newly constructed shops at Tampa, Florida, after which, he agreed and was transferred to Tampa shops January 8, 1927. Mr. Salter, prior to his transfer to Tampa, had injured himself at the Waycross shops, causing rupture, and worked only one week at Tampa when illness, requiring medical treatment, necessitated his return to company hospital located at Waycross, Georgia. After being received at hospital, it developed that his physical ailments were such as to cause Dr. Kenneth McCullough, chief of staff, to recommend that he be transferred back to Waycross shops in order to receive regular and necessary treatment of his condition. Mr. Salter was confined to the hospital for one month and released on sick leave and until the first of April, 1927, at which time he returned to work at Waycross shops in accordance with recommendation of Dr. McCullough, which had the approval and consent of both the company and the shopmen's association. The matter of Mr. Salter's retaining his seniority rights at Waycross shops, following his return from Tampa, was acted upon by the shopmen's association during month of April, 1927, and without a dissenting vote, it was agreed by Waycross membership of said association that, inasmuch as he was transferred back to Waycross on the advice of company doctor that his seniority would remain as before being transferred.

After returning to work at Waycross shops, as of April, 1927, Mr. Salter exercised his original seniority date of March 1, 1923, continuously for a period of seven years, during which time there were several reductions in force, which would have affected him if not for his date of March 1, 1923.

In the years 1930 and 1931, Mr. Salter served the shopmen's association, at Waycross, as financial secretary. In 1933, August, he became active in

When Mr. Salter was notified on January 5, 1934, that his seniority was at Tampa and that he could not be continued in service at Waycross, he was advised that work was available at Tampa, where he held seniority, and he could return there and resume his work. Instead of returning to Tampa, he made request for a thirty day leave of absence on the basis of the condition of his health. His request for this leave of absence was granted; and renewed requests from him for thirty days further leave of absence were granted successively, until September 6, 1934. Under date of September 3, Mr. Salter again made application to the master mechanic at Tampa for another thirty day leave and was advised by the master mechanic there, under date of September 5, as follows:

"Your letter of the 3rd received this date, with reference to additional 30 days of leave of absence beginning September 6th.

It will be necessary that you report to our medical examiner, Dr. T. J. Ferrell, Waycross hospital for examination before we can pass on your request. Kindly take care of this promptly."

If Mr. Salter felt that the action of the master mechanic at Tampa, in insisting on his return there for work (which was still available for him) or furnishing a medical certificate, was treating him unjustly, he had the right under the rules of the existing agreement to take the matter up on appeal with the higher officers of the company; but he did not pursue this course.

He took no action towards furnishing a medical certificate as a basis for his request for further extension of his leave of absence, nor did he report for duty at Tampa, where he held seniority and where work was still available for him. He completely ignored the letter from the master mechanic at Tampa.

It is obvious from the foregoing that Mr. Salter is entirely unwarranted in alleging as he does that he was removed from service on January 6, 1934. On the contrary, up to September 6, 1934, he was still considered in service and could have reported at any time at Tampa for work, which was available to him there; and as he was on leave of absence granted him formally by the master mechanic at Tampa, he was still considered as "in service" up to September 6, 1934. But by his failure to furnish the doctor's certificate requested by the master mechanic before passing upon his application for another thirty days leave after September 6, by failing to carry the matter up on appeal to higher officers, as he had the right to do under the agreement, and by refusing to report for work that was still available for him at Tampa, Mr. Salter automatically took himself out of service.

The respondent submits that it never removed Mr. Salter from service. Up to the time that he took himself out of service, the respondent held open to him full opportunity to continue at work at the point where he held seniority.

OPINION OF THE DIVISION: The issue in this case relates to the place and date of seniority of Machinist Hugh Salter. Salter had seniority rights as of March 1, 1923, at the Waycross shops of the carrier. When new shops were opened at Tampa, January 8, 1937, Salter went to Tampa with the understanding that his seniority rating would be transferred with him. He remained in Tampa only five days, and on recommendation of the doctor, returned to Waycross, where he would have facilities for medical care. He began work again at the Waycross shops immediately and continued for seven years. The carrier insists that his seniority was only temporary at Waycross, upon his return, while the employees contend that full seniority was restored. The carrier contends, as in Docket 266, that the Division has no jurisdiction, because there was a system board of adjustment on the property at the time this action arose.

The carrier contends that this Division has no jurisdiction because the case had been settled on the property and was not one pending and unad-

justed at the time the Act took effect. The contention is not sustained by the facts in the docket. The Division has jurisdiction over this matter as a grievance which had not been adjusted by the parties.

Salter had seniority either at Tampa or Waycross. He could not lose his seniority rights by technicalities. It appears that he never was given seniority rating at Tampa. He returned to Waycross within five days and worked for seven years before the issue was raised. It was then claimed that Salter had been accepted in Waycross on a temporary basis. There is much doubt in the record as to that fact, but obviously it must be assumed that after seven years an employe could not be considered as on a temporary basis when, as a matter of fact, he held no seniority elsewhere. To take an opposite view would be to accept the conclusion that Salter had lost his seniority through technicalities. The conclusion is that Salter's seniority is at Waycross and should date from March 1, 1923.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois. this 4th day of October, 1938.