

Award No. 268

Docket No. 269

2-FEC-MA-'38

**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: That C. E. Shine, machinist, be reinstated to service at Miami, Florida, with his seniority unimpaired and paid for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Machinist C. E. Shine entered the service of the Florida East Coast Railway on January 1, 1926, working on running repairs and Government inspection at Key West, Florida.

Laid off account of shop being abolished following 1935 Labor Day hurricane at that point.

November 9, 1935, exercised his seniority in conformity with Rule 4-A of the working agreement, which reads in part:

"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."

POSITION OF EMPLOYEES: Mr. Shine exercised his seniority at St. Augustine, Florida. Because of certain things that happened, he was dismissed. (See Exhibits 1, 2 and 3, inclusive).

In the conference held with superintendent of motive power and machinery, Mr. F. S. Robbins, on November 20, 1935, understanding and agreement was arrived at that we would forget that Mr. Shine had come to St. Augustine and he would be given a job at one of the running repair shops. Mr. Robbins instructed Mr. Shine (who was in attendance at this November 20 conference) on his way home to stop at the New Smyrna shops and see Mr. W. W. Scott, general foreman, and if Mr. Scott did not have a job to place him (Mr. Shine) on, then that he stop and see Mr. C. W. Davis, engine-house foreman at Miami, Buena Vista shop; if Mr. Davis did not have a job, then to leave his address with Mr. Davis, and when there was a job open, he (Mr. Shine) would be called. Mr. Shine did as he was instructed by Mr. Robbins.

On July 1, 1936, a job was bulletined at Buena Vista, and a helper was promoted to a machinist and placed on this bulletined job, which was contrary to the understanding and agreement arrived at with Mr. Robbins in the conference held November 20, 1935.

We contend that Mr. Shine should have been called for this job, which was open on July 1, 1936, and bulletined, as the job was a similar one to that which Mr. Shine was on at Key West before the Key West shop was abolished, instead of the company promoting a helper to a machinist and

Of course you realize we now are working under an agreement which requires the bulletining of all new jobs or vacancies and when any such bulletin is issued you have a chance to bid on it as outlined in Rule 14.

Under Rule 13 you were given opportunity to locate yourself on account of Key West Shops being abandoned and this transfer was made exactly in accordance with Rule 13, and these Rules have just been rewritten and approved by the men you helped elect to represent you.

You should ask some one to keep you informed of the bids that are being bulletined as no doubt the committee is interested enough in you to see you relocated.

Yours truly,

(Signed) F. S. Robbins
Superintendent M. P. & Machinery.

1-B

Cy: Messrs R. B. Hunt
S. B. Little
W. W. Scott
C. W. Davis."

Acting on Mr. Shine's plea to Mr. Robbins, dated December 19, 1935, above quoted, Mr. Shine was offered, through his representative, position at Miller shops, St. Augustine, Florida, as watchman. While this position required longer hours than a machinist, the monthly pay was approximately what a machinist would make on a monthly basis, taking into consideration the short time the shop was working. Mr. Shine refused this, stating that he was contending for machinist's job, pay for time lost and seniority.

Mr. Shine bid in the job to which he was entitled when Key West was abandoned, and the only question in regard to this is whether or not he displaced the wrong man, as the two youngest machinists on the system were at Miller shops, St. Augustine, Florida. He voluntarily gave up the job and applied to the superintendent motive power and machinery for anything he could get. He was offered a job in accordance with his request and refused it.

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.

It appears from the record that the initial effort to apply the provisions of Rule 4-A of the then existing agreement was disposed of by agreement between the proper authorities (November 20, 1935), and further agreement made to give Machinist Shine the opportunity to fill the first vacancy occurring for a machinist at one of the running repair shops.

A new position for a machinist was created at the Buena Vista (Miami) shops, effective as of July 1, 1936. The position was filled by promoting a

helper (A. E. Albertus) to classification of machinist and assigning him to the position, although Mr. Shine's address was on file in the offices of the proper officials at Buena Vista.

AWARD

Machinist C. E. Shine will be reinstated and placed at the Buena Vista (Miami) shops with his proper seniority standing. Claim for time lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1938.