

Award No. 350

Docket No. 373

2-ACL-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That D. J. McCray, machinist helper, Thomasville, Georgia, shops, is entitled to seniority from original date of employment, 10-15-22, instead of his present showing of 8-1-26, date given after return to service following his improper discharge of 4-8-26.

EMPLOYEES' STATEMENT OF FACTS: Mr. McCray was employed as machinist helper at Thomasville, Georgia, prior to and until the shop crafts' strike of 1922. He re-entered service of the carrier at the same location on date of October 15, 1922, where he worked continuously until April 8, 1926, when summarily discharged by General Foreman T. B. Dobbins, on account of being absent from work on night of April 7, 1926.

McCray absented himself from work on night of April 7, 1926, on the advice of his family physician that he do so in order to care for his sick and delirious wife who was seriously ill with influenza. McCray's foreman was appropriately advised regarding the cause of his absence from duty. He was restored to service on his former job in the month of July, 1926, being sent for by Mr. Dobbins.

The seniority roster published January 1, 1938, was opened for corrections for a period of thirty (30) days from March 1, 1938, to provide for corrections found necessary and to insure all employes their proper seniority dates in accordance with the rules in the agreements under which claim for correction was based. Notification to employes regarding this program for correction of seniority was in the form of a bulletin over the signature of the general superintendent motive power, which was posted at all shop points.

In compliance with such bulletin, McCray filed claim for restoration of his former seniority date, setting forth his reasons therefor, and when handled with the general foreman he was treated discourteously and shortly thereafter cut off in reduction of force, effective April 18, 1938, and only receiving intermittent work since that time.

This case has been handled in accordance with provisions of the rules and the amended Railway Labor Act, and in denying adjustment the carrier has also refused to join us in submission to Second Division, National Railroad Adjustment Board.

POSITION OF EMPLOYEES: D. J. McCray, when dismissed from service April 8, 1926, was working on the night shift from 11:00 P. M., until 7:30 A. M., under the direction of Foreman Harry Wyche. He and his brother-in-law, Mr. C. J. Williford shared the same residence in Thomasville, Georgia. Williford was also working as engine box packer at the time of McCray's dismissal, his regular assignment starting at 7:00 P. M. On date of April 7,

Helper McCray's protest was then handled by the general chairman of the machinists through the regular channel up to the head of the mechanical department of the carrier. Statement was made in conference that this man was of a type that would not be insubordinate and was incapable of making a vigorous defense in his behalf. It was agreed the general superintendent motive power would interview McCray at Thomasville and observe these characteristics. At this interview, it was found McCray had all of the capabilities required to present his case and did not lack ability to properly defend himself in a controversy. During this interview, McCray was given full opportunity to explain his claim for change in seniority date. McCray at that time stated that he was asking for change in his date because other employes had their dates changed and also stated in rather forceful language that the general foreman at Thomasville had no right to discharge him in 1926. The general chairman of the machinists was informed on February 25, 1939, that no change could be made in Helper McCray's seniority date.

The carrier contends that Helper McCray was not erroneously discharged. He was discharged for insubordination to his foreman and violation of the rules of the agreement between the carrier and the employes of the mechanical department. Rule 13 of this agreement, dated January 1, 1926, reads as follows:

"An employe detained from work on account of sickness or for any other good cause, shall notify his Foreman as early as possible which should be in ample time for the Foreman to arrange for a man in his place, if practicable."

Helper McCray did not observe this rule and when asked by his foreman to explain his absence, he got nasty and used abusive language to the man he worked under.

It is significant to note that Helper McCray's seniority date of 9-24-26 stood on the seniority roster without protest until March, 1938, a period of about twelve years.

The carrier contends that there is no merit to this claim and asks that the Board dismiss same.

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.

The record in this case presents many contradictory statements; therefore, considering all the circumstances, it is the opinion of the Second Division that McCray should have his original seniority restored.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of July, 1939.