

Award No. 458

Docket No. 492

2-ACL-BM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That T. M. Tillis, boilermaker at Lakeland, Fla., was discharged March 28, 1934, for his affiliation with the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, affiliated with the Railway Employees' Department of the American Federation of Labor, and that he be restored to service with seniority rights unimpaired and compensated for time lost.

EMPLOYES' STATEMENT OF FACTS: T. M. Tillis, boilermaker, entered the service of the Atlantic Coast Line Railroad at Lakeland, Florida, October 1, 1925, with previous intermittent service since 1905. Discharged from service on March 28, 1934, charged with fighting on the property of the carrier.

POSITION OF EMPLOYES: That T. M. Tillis, boilermaker, was removed from service because of his favorable attitude towards the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, affiliated with Railway Employees' Department, American Federation of Labor, and not as indicated by charge of management, for fighting on company property. The contention of the employees is substantiated by affidavit marked Exhibit A. He was warned by dues collector of the Shopmen's Association, Atlantic Coast Line Railroad, that he would be run off unless he paid his dues in the Shopmen's Association, Atlantic Coast Line Railroad; further, in Exhibit B we have positive statement under oath by boilermaker foreman that the general foreman had instructed him to get rid of Boilermaker Tillis for his activity in the American Federation of Labor. Exhibit C furnishes additional proof of real reason why Boilermaker Tillis was dismissed from the service when statement before witnesses was made by the night roundhouse foreman that the general foreman had instructed him to get rid of Boilermaker Tillis as he had too much influence with the men—"THAT HE DID NOT CARE HOW HE DID IT, BUT HE MUST GO." From Exhibit marked D, the so-called fight (as charged), it is clearly shown that the altercation was in fact agitated by the general foreman when he instructed Handy Johnson, boilermaker helper assigned to assist Boilermaker Tillis, that he did not have to do everything that Boilermaker Tillis told him to do. Consideration should be given also to the fact that Boilermaker Tillis was not advised as to the precise charge against him in writing in accordance with schedule rules; that, not being a member of the Shopmen's Association, he was denied representation as shown in Exhibit E; that the only hearing given was merely the taking of a statement shown in Exhibit F. Attention

Mr. J. A. Franklin, international president of the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, under date of January 25, 1940, in which Mr. Franklin writes that Mr. Tillis believed that he was being attacked unfairly from all angles and "took matters in his own hands."

A written notice dated July 7, 1939, of intention to file an ex parte submission with the National Railroad Adjustment Board, was sent the carrier and later postponed. Since the notice of intention to file this case and the postponement, the following attitude has been displayed by Mr. Tillis to coerce and stir up strife and discontentment among the employes, an example of which is Exhibit H, photostatic copy of a letter written by Mr. Tillis under date of August 4, 1939, to Mr. G. E. Cherry, boilermaker at Portsmouth, Va.

Mention has also been made of employes favorable to independent organization discriminating against Mr. Tillis and local officer knew it and did not stop it. The Transportation Act of May 20, 1926, distinctly states under heading "General Duties, Section 2, Third":

"Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other."

Therefore, local officials could not interfere in employe representation or organization matters, and it is denied that anything regarding organization or organization matters had any effect on the part of the Atlantic Coast Line Railroad with Mr. Tillis violating the rule by fighting and using profane and abusive language to an employe who works under his direction.

Carrier respectfully submits that Mr. Tillis was not discriminated against as both Mr. Tillis and Boilermaker Johnson were discharged at the same time on account of fighting on premises of the company while on duty.

Carrier is supported by previous award by the National Railroad Adjustment Board, First Division, as follows: Award 476, Docket 779.

Mr. Tillis' actions since he was dismissed from the service have not warranted the carrier to give reinstatement of Mr. Tillis any consideration, as it is our desire to have satisfied employes with peace and harmony on the road.

It is the position of the carrier that claim for reinstatement of Mr. Tillis with pay for time lost while held out of service is unwarranted; the discipline applied is justly merited and should remain as it is.

The carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this, its initial answer.

Therefore, we respectfully request that this claim be denied.

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 facts of record warrant vacating the discipline without retroactive adjustment of wages.

AWARD

Boilermaker T. M. Tillis shall be reinstated with seniority rights unimpaired without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1940.