

Award No. 702

Docket No. 716

2-ACL-MA-'42

**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 the absence from work of S. F. Sweat, machinist, Tampa, Florida, between the dates of August 11 and 24, 1941, inclusive, did not constitute a violation of Rule 13 of the current working agreement.

That the investigation accorded Sweat subsequent to his two weeks' absence from work was unfair and improperly conducted.

That the suspension and subsequent dismissal of Sweat represents unjust and improperly assessed discipline, therefore, he should be reinstated with seniority unimpaired and compensated for all loss of time, effective August 25, 1941, date held out of service on alleged charge of violating Rule 13.

EMPLOYEES' STATEMENT OF FACTS: Until receiving formal notice of his dismissal from service on date of September 8, 1941, S. F. Sweat had been continuously employed by the carrier since September 20, 1922, working as machinist helper, separate machinist and machinist. His employment was at the points of High Springs, Florida, Waycross, Georgia, and lastly at Tampa, Florida.

Sweat's original home is in Pierce County, Georgia, adjoining county to Ware—in which Waycross is situated—and in which Sweat owns a farm. He has rented his farm ever since he entered the carrier's service. Since being employed by the carrier, and particularly since working at Tampa, it has been necessary for Sweat to visit his farm during the marketing season in order to protect his interests. More recently such visits have become imperative in that the owner's presence is required to properly transact the marketing of farm products grown under the Federal Agricultural Acts.

During the latter part of June, 1941, Sweat approached his immediate foreman, Mr. J. B. Hannah, in reference to arranging his absence from work for a period of two weeks. Mr. Hannah declined taking any action in the matter and referred Sweat to the general foreman, Mr. E. G. Jones. Further handling had with Mr. Jones resulted in Sweat being asked to put his request for two weeks' absence from work in writing. Sweat complied with this request and never received written reply from either Mr. Jones or any other official of the carrier. Further oral handling of the matter with both Messrs. Jones and Hannah resulted in Sweat's absenting himself from work effective August 11, 1941. Neither of these gentlemen raised any objection to his doing so, and, as a matter of outstanding fact, Mr. Hannah conferred with Sweat on Saturday afternoon, August 9th, relative to who could best

tember 8, 1941, Machinist Sweat was informed by the master mechanic at Tampa that he was being dismissed from the service of the company account of his violation of Rules 13 and 32 (b) of the agreement. Sworn copy of letter from Master Mechanic Stephenson to Machinist Sweat herewith submitted dated September 8, 1941, shown as carrier's Exhibit F.

The carrier has been very considerate with Machinist Sweat in granting him vacations and leaves of absence when he requested same. It seems that Machinist Sweat owned or rented a farm somewhere in Georgia and during the years that he was at Tampa asked for numerous leaves of absence to look after the work on this farm. He was invariably granted these requests when mechanics were plentiful and his place could be easily filled. The records show that since Machinist Sweat came to Tampa shops in 1927 he was granted leaves-of-absence as follows:

1927	7	Days
1933	53	"
1934	103	"
1939	8	"

Affidavit herewith submitted from D. A. Jamie, clerk-timekeeper at Tampa shops, showing the exact record of the leaves given Machinist Sweat, as referred to above shown as carrier's Exhibit G.

Copy of investigation given Machinist Sweat shown as Exhibit H.

The carrier has shown that Machinist Sweat had at all times received the utmost consideration in his requests for leaves of absence when in position to grant these requests. However, when business was such that the request could not reasonably be granted, Machinist Sweat evidently made no endeavor to adjust his affairs so that the business of the carrier could be protected. He deliberately walked off the job without securing any leave on August 11 in violation of Rules 13 and 32 (b) of the current agreement between the Atlantic Coast Line Railroad Company and employes of the mechanical department. Rule 13 reads as follows:

(a) 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.

(b) When the requirements of the service will permit, employes upon written request will be granted leave-of-absence in accordance with the general regulations of the Company. An employe absent on leave who accepts employment with another employer will lose his seniority, unless special provisions have been made therefor by the proper official, and the local committeeman.

Rule 32 (b) reads as follows:

"(b) All employes on an hourly basis will comply with the hours for work and apply themselves diligently during working hours."

The carrier, therefore, contends that they were fully justified in dismissing Machinist Sweat from the service for absentsing himself without permission. The petitioners have no evidence either written or oral that Machinist Sweat's request for a two-weeks' vacation was granted. Carrier, therefore, respectfully requests the National Railroad Adjustment Board to deny this claim.

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 this dispute were given due notice of hearing thereon.

The record in this case shows requested leave of absence was very loosely handled by all concerned and both parties are equally involved.

AWARD

Machinist S. F. Sweat shall be reinstated, with his former seniority. Claim for compensation for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1942.