

Award No. 617

Docket No. 524

2-ACL-FO-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the dismissal of Laborer John E. Williams, Waycross, Georgia, effective September 14, 1938, was unjust; therefore, he should be reinstated with seniority unimpaired and compensated for loss of time.

EMPLOYEES' STATEMENT OF FACTS: About 10:30 A. M., September 14, 1938, Hostler A. C. Darling and Laborer John E. Williams placed engine 1627 on the outgoing hostler track at front gate of Waycross shops for train No. 503. Laborer Williams opened drain cocks on air pumps and main reservoirs in accordance with instructions received from Hostler Darling just a few minutes before spotting this engine. Some fifteen or twenty minutes later it was discovered that this engine should be brought back to engine house so that the box packer could service it. Hostler Darling and Laborer Williams both understood that the engine was to be placed opposite the new portion of engine house for this work to be done and not across the turntable. When taking this engine from the outgoing hostler track back to the engine house, Laborer Williams closed the air cocks and the air pumps and the main reservoirs and got on the right rear corner of the tank in full view of the hostler. The hostler proceeded to back engine 1627 to the engine house and when he did not stop where engine was to be serviced by the box packer, Laborer Williams sensed that something had gone wrong whereupon he jumped off the engine and hailed the hostler who was then unsuccessfully trying to stop the engine. Almost immediately the hostler, finding he could not stop the engine, sprang from the cab.

POSITION OF EMPLOYEES: That the responsibility in connection with accident to engine 1627 at Waycross engine house, on September 14, 1938, when determined, was improperly placed, in that it included Laborer John E. Williams. In this connection it is significant to note that Hostler Darling was held out of service for a period of approximately two months for his responsibility in connection with this accident. It is further significant to mention the fact that on or about the time Mr. Darling was reinstated to service, Laborer Williams was required to make a further statement, which in fact, was another investigation required by Master Mechanic C. A. White, and not confined to the accident of engine 1627, but apparently to establish a general charge of negligence as justification for dismissing Williams from the service.

have John E. Williams address a letter to the enginhouse foreman and specify the conditions in which he is to be reinstated. However, in a letter written by Mr. D. L. Brett, general chairman, Firemen and Oilers, representing John E. Williams, to the general superintendent, motive power, stated he was in receipt of letter from John E. Williams, dated August 17, stating that he did not want to go back to work under the conditions set out in your letter of the above mentioned date, which was July 21, 1939. However, in the close of this letter, Mr. Brett states that "Williams will go back to work as per the provisions of your letter of July 21."

However, John E. Williams would not agree to the settlement of his case between the general superintendent motive power and his representative, as he has not met the conditions under which he was to be reinstated. Therefore, carrier is not at fault that John E. Williams is still out of service.

Carrier contends that the conditions as discussed in conference on July 13, 1939, and as set out in letter to Mr. Brett, general chairman, July 21, 1939, and acceptance by Mr. Brett in letter of August 31, 1939, where he states that Williams will go back to work as per the provisions of your letter of July 21, that this agreement settled the case.

Carrier is supported by decision of the National Railroad Adjustment Board, Second Division, Award No. 94, Docket No. 130.

Therefore, respectfully requests the National Railroad Adjustment Board to dismiss 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 said dispute were given due notice of hearing thereon.

Reasonable men might well differ whether Williams was in fact negligent. By his version, his conduct stands sufficiently explained so that it can be said he was not negligent. The carrier has failed to sustain the burden of proof resting upon it as the party asserting negligence. Likewise, intentional tortious conduct has not been satisfactorily established.

Darling received light punishment for his conceded negligent performance in connection with the accident while Williams was discharged. The punishment inflicted upon Williams is too severe to be upheld.

AWARD

Williams to be reinstated with seniority unimpaired and with compensation for all time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1941.