

Award No. 573

Docket No. 526

2-ACL-BM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That V. L. Rogers, boilermaker, Emerson shops, Rocky Mount, North Carolina, is improperly held out of service and should be restored to employment with seniority unimpaired and compensated for all time lost since September 2, 1939.

EMPLOYEES' STATEMENT OF FACTS: V. L. Rogers, boilermaker, Emerson shops, was out of service from June 12, 1938, until August 31, 1939, account of his health. Prior to August 31, 1939, Mr. Rogers reported to the Atlantic Coast Line Relief Department Hospital in Rocky Mount to secure a release (Form 38) from the Relief Department so that he might return to work. Dr. R. H. Noell, chief of staff, examined Mr. Rogers and issued the necessary Form 38 and told him to report for duty. Mr. Rogers reported to Boilermaker Foreman E. J. Pitt on August 31, 1939, and was told by Mr. Pitt to report for work on the following day, September 1, 1939.

Mr. Rogers reported for work on September 1, and was assigned to the regular work of a boilermaker. Mr. Rogers worked September 1, and 2, handling his work as usual and no complaints were made by Mr. Pitt, under whose supervision he worked these two days, or any other supervisor or official.

Emerson shops were closed on September 3, Sunday, and September 4, Labor day. On the morning of September 4, Mr. Pitt went to Mr. Rogers' home and notified him to report to Dr. Noell for another examination and ordered him not to report for work the next day. Mr. Rogers reported to Dr. R. H. Noell the next morning, September 5, and was told by Dr. Noell that he was physically able to work and to report back to the shops and go to work.

On September 6, Mr. Rogers reported for work at the boilershop and found that his time card had been removed from the rack by the clock. Mr. Rogers went into the shop to ask Mr. Pitt for his time card and was asked by Mr. Pitt, "What the h--- are you doing down here?" Mr. Rogers replied that he had reported to Dr. Noell and had been sent back to work by Dr. Noell. Mr. Pitt told Mr. Rogers that he did not give a d--- but for him to go home and stay there until he, Mr. Pitt, sent for him. Mr. Rogers asked Mr. Pitt why he was being sent home when he had been released for work by the hospital, but Mr. Pitt refused to give him any reason for this action.

A few days later Mr. Pitt called at the home of Mr. Rogers and took his annual pass. Mr. Rogers, again, sought a reason for his being held out of

right hand; therefore, instructed Boilermaker Rogers to consult with the medical authorities at the Rocky Mount Hospital. This, Boilermaker Rogers did, and was removed from active service by the medical authorities until such time as he is able to perform the work in his classification. The conditions as existed and procedure followed are verified by affidavit from Boiler Foreman E. J. Pitt, as Exhibit "A," and Lead Boilermaker D. B. Lacy, as Exhibit "B."

It is noted in these affidavits from Boiler Foreman Pitt and Lead Boilermaker Lacy that the lightest work in the shop was given to Boilermaker Rogers endeavoring to help Boilermaker Rogers all possible in employment, but they saw that he was unable to perform work in his classification on account of his physical condition.

A copy of letter was furnished the employees' committee, signed by Doctor R. S. Anderson of Rocky Mount, N. C., stating that he examined Boilermaker V. L. Rogers on February 13, 1940, and found him able to do light work.

Particular attention is called to the work specified as light work; as light work he may have had in mind does not exist in the boiler department.

However, to further ascertain the condition of Boilermaker Rogers, he was requested to report at the Rocky Mount Hospital for examination by the superintendent and medical director. This he did, and the superintendent and medical director examined Boilermaker Rogers on April 3, 1940, and advises Boilermaker Rogers is not able to do work in his classification.

Carrier is agreeable to a further examination by a three-man board, this board to consist of the carrier's medical authority, employees' medical authority and a specialist (selected by these medical authorities) in the particular disease or diseases that Boilermaker Rogers is suffering with, and is willing to abide by the decision rendered.

It is to be recognized that the carrier is responsible for the safety of its employees and must be able to maintain conditions so employees will not be a hazard to themselves or other employees.

Carrier further contends there is no violation of any rule of the agreement. However, employees' representative desires to violate Rule 32, Paragraph "B."

Rule 32, Paragraph (b)

All employees on an hourly basis will comply with the hours of work and apply themselves diligently during working hours.

Boilermaker Rogers has not been able since he had this heart attack on June 12, 1938, to apply himself diligently during working hours on work in the boiler department.

Boilermaker Rogers is not removed from the service—only out of active service account of sickness until he is able to perform the work in his classification and his seniority is unimpaired as his name is still shown on the seniority roster. Therefore, there is not any discrimination in any respect.

Therefore, carrier 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute involves the right to employment after being absent from work due to a heart ailment and associated complications.

The record indicates the company's doctor had approved the employe's return to work, provided light manual work was furnished. The employe returned to service and worked August 31 and September 1, 1938, after which he was removed from the service by the boiler foreman who alleged he was not able to perform the work assigned.

The carrier's representative further contended the assignment was "the lightest work in the shop," while the employes' representative asserted "he was assigned to the regular work of a boilermaker," and further cites Rule 14, which reads as follows:

"Faithful Service.

Employees who have given long and faithful service in the employ of the Company, and who have become unable to handle heavy work to advantage, will be given preference of such light work in their line as they are able to handle."

contending that the carrier ignored this rule.

Inasmuch as the record is not conclusive, the representatives of the parties interested should confer further on the application of Rule 14 to this dispute.

AWARD

An employe, under Rule 14, when he becomes unable to handle heavy work to advantage, will be given preference of such light work in his line as he is able to handle.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. A. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1941.