

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
MISSOURI PACIFIC RAILROAD COMPANY**

DISPUTE: STATEMENT OF CLAIM.—For compensation equal to three days' pay as machinist, and personal expenses amounting to \$4.00, total \$21.49, for time lost and expenses incurred in reporting to St. Louis Hospital for physical examination June 26, 1934.

JOINT STATEMENT OF FACTS.—Mr. Cody, machinist, Osawatomie, Kansas, sustained a personal injury at or about 11:00 A. M., May 15, 1934, that resulted in the loss of the tip of the left fourth finger which was amputated at the distal joint. He reported for work June 23, 1934.

POSITION OF EMPLOYEES.—The committee takes the position that in cases of minor injuries, where the use of the X-ray or laboratory facilities are not needed, local doctors, if competent to treat our patients, are certainly competent to release them for service and that this entire case was a medical case and not one for master mechanic to decide. It is our opinion that this is purely a discrimination case, as it happened prior to the time the vote was taken on our road, at which time we were recognized by the Railway Employees' Department, and it was commonly known by the master mechanic at the time that Mr. Cody was active in organizing the machinist lodge at Osawatomie.

We do not claim that our agreement was violated, but we take the position that Cody lost this time after reporting for work simply as a result of carrying out master mechanic's instructions, i. e., reporting to the St. Louis Hospital, when he could have been working.

POSITION OF CARRIERS.—Mr. Cody is employed in our Osawatomie, Kansas, shop as machinist. On or about 11:00 A. M., May 15, 1934, he sustained personal injury as stated in the "joint statement of facts." June 21, 1934, Mr. Cody executed the carrier's release form with the Claims Department, release specifically providing therein that "re-employment is not a part of the consideration."

Mr. Cody reported to the master mechanic. There was some question in his (master mechanic's) opinion as to whether or not Mr. Cody could properly perform his duties as machinist with his physical disability, and informed Mr. Cody that before he would be permitted to resume service it would be necessary for him to undergo a physical examination by the carrier's chief surgeon. This is a well-defined practice of procedure, the carrier requiring applicants for employment, as well as those removed from active service for physical disabilities, to undergo a physical examination by its Medical Department before they are permitted to resume active service.

On June 26, 1934, Mr. Cody was examined by the carrier's chief surgeon, and the latter qualified him (Cody), so far as his physical condition was concerned, to resume duty. The employing officer (master mechanic) was so notified by the chief surgeon, and Mr. Cody reported for and was permitted to resume work commencing A. M. of June 28, 1934.

FINDINGS.—The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe 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, and oral hearing held May 27, 1935.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1935.