

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee Wm. H. Spencer when Award was rendered

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 15, RAILWAY EMPLOYEES' DEPT.,
A. F. OF L.**

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Shall C. J. Bodger, P. Rusche, machinists, Minneapolis, Minn., shops; Edw. O'Connor, machinist helper, Marshalltown, Iowa, shops; Eric Johnson, boilermaker helper, Minneapolis, Minn., shops; James McGee, Gust Larson, blacksmiths, Minneapolis, Minn., shops; A. F. Ross, nut tapper, Minneapolis, Minn., shops; A. W. Mitchell, pipefitter, Minneapolis, Minn., shops; J. A. Graber and H. C. Ramin, coach carpenters, Minneapolis, Minn., shops; be restored to service with pay for all time lost from July 26, 1935; and A. J. Anderson, drill press man be restored to service with pay for all time lost from August 5, 1935, and all restored with full seniority rights unimpaired.

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 Division, being unable to reach a decision, called in Wm. H. Spencer, as Referee to sit with it as a member.

FURTHER FINDINGS.—On May 14, 1935, the general manager of the carrier herein, "as a safety measure designed to protect and safeguard the employe, his co-employees and the public", announced a general program of physical examinations for all employes over 65 years of age. The program omitted "clerical forces and supervisory agents around stations" from its operation. The announcement specifically stated that "examinations for eyesight, color perception and hearing are not to be included in this program." The physical standard prescribed for the examination is that adopted by the American Association of Railroads.

Employes who fall below the prescribed standard are furloughed or suspended until they can pass the examination. An employe disqualified by an examination is entitled to a second examination either by another company physician or by a physician of his own choice. If there is disagreement between the first and second examining physicians, the employe is entitled to a third examination by a third physician. In this event, the right of the employe to return to service is determined by the majority opinion. A disqualified employe who meets the prescribed standard by an examination is reinstated in terms of his original seniority. Men who cannot qualify for reinstatement are carried by the respondent as furloughed employes with such rights and privileges as attach to this status. The examinations here described are conducted at the expense of the company.

During the period from May 20, 1935, when the program was put into operation, down to the date of this submission, the carrier called 60 shop craft employes who had passed the age of 65 for the prescribed physical examination. On the basis of the results of the examinations, it disqualified eleven. Later, on the basis of re-examinations, it qualified two and reinstated them with unimpaired seniority rights.

A representative of the petitioner protested this course of action on the part of the carrier, and unsuccessfully sought to adjust the dispute in conference

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will be required to make statements only as to their ability and address or relatives, and name and address of last employer."

The Referee, in view of these circumstances and the decisions of the United States Railroad Labor Board, concludes that Rule 42, from the point of view of the carrier, is permissive as to the types of physical examinations therein mentioned, and prohibitive as to other types.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1936.