

Award No. 547

Docket No. 533

2-Erie-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Rule 17 (c) of the Rules and Rates of Pay of the Shop Crafts' Agreement on the Erie Railroad, and Award No. 368, Docket No. 350, Second Division of the National Railroad Adjustment Board, was violated by the Erie Railroad Company when Hugh O'Neil, furloughed machinist helper from Susquehanna, Pa., was compelled to submit to a physical examination before being allowed to assume duties as a machinist helper at Hornell, New York, roundhouse, and that his name be placed on the machinist helpers' roster with the date of October 14, 1939, and that he be compensated for all time lost, due to being held out of service on account of this compulsory physical examination.

EMPLOYEES' STATEMENT OF FACTS: On October 14, 1939, Hugh O'Neil, furloughed machinist helper at Susquehanna, Pa., reported to Hornell, N. Y. to fill a vacancy as a machinist helper in the roundhouse. He was compelled to submit to a physical examination which, according to the local supervision, he failed to pass at that time.

POSITION OF EMPLOYES: That Rule 17 (c) of the rules and rates of pay for mechanical department employees, which reads as follows:

"When reducing forces, if additional employees are needed at any other point, employees laid off will be given preference and be permitted to transfer to the nearest point with the privilege of returning to home station when force is increased, such transfer to be made without expense to the Company, seniority to govern."

was violated by the management of the Erie Railroad, as the rule does not stipulate physical examination as part of his qualification to fill job at any other point, but the rule does state he will be given preference, also seniority to govern.

During the month of October, 1939, there were several vacancies developed in the machinists' craft for helpers in the roundhouse at Hornell, and, there being no furloughed machinist helpers at this point, a request was sent to Susquehanna, Pa., for machinist helpers. Mr. O'Neil, who was furloughed as a machinist helper at Susquehanna, was one of the helpers who reported to Hornell as a result of this request, and was advised that he would have to submit to a physical examination before he would be allowed

1. As outlined on Exhibit A, Machinist Helper J. M. O'Neil held no seniority rights as a machinist helper at Hornell, New York; therefore, any reference to Rule 17 (c), which is cited by the general chairman in support of the claim, is irrelevant.
2. Award No. 368, Docket No. 350, Second Division, National Railroad Adjustment Board, also cited by the general chairman, is irrelevant as covered in Exhibit C.
3. Physical examination at Hornell, New York by local examining surgeon on October 14, 1939 determined that O'Neil had varicose veins that had become ulcerated and only partially healed, and as a result of the information obtained from the examining surgeon, O'Neil returned home and arranged for treatment with his local doctor, and his local doctor later advised Chief Surgeon Dinnen that he had been treating O'Neil for this condition along with some other defects.
4. There was no violation of rules effective May 1, 1929, as nothing within these rules can be interpreted by anyone as requiring the railroad company to accept for employment anyone who is physically not qualified.
5. Machinist Helper O'Neil was examined in accord with rules governing the determination of physical and educational qualification of employees, which rules have been in effect for many years.
6. This request is for a new rule, which is not within the jurisdiction of the Second Division, National Railroad Adjustment Board.

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 employees 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.

These findings apply to the following dockets:

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513	532	538
523	533	539
527	534	555
		556

The question here is over the claimed right of the carrier to require physical examinations after employment.

There is no provision in this agreement providing for re-examination of these employees. Moreover, there is nothing in the record or in the history of the controversy between the employees and the carrier on this question that would indicate that the employees were ever willing that such a practice be adopted.

Though it has been held in general that physical examinations may not be required of these employees, there must be some limit to the contention that the carrier cannot require such examinations under any circumstances. It would not be reasonable to contend that there are no circumstances in which it may not be required.

A change in the employe's condition of such a nature as to be obvious and likely to subject not only such employe but fellow employees to much

hazard, would give the carrier the right to investigate to determine if his condition is such as actually to be hazardous. It does not embrace the right to examine for mere inroads of age.

Where a serious accident has occurred, or a serious illness experienced, such as to make it apparent to anyone that the man's condition has so changed as to make it probable that his retention or resumption of work would constitute a serious hazard, it is but reasonable to assume that the carrier has the right to protect itself and fellow employees.

This does not give the right to the carrier to insist on an examination before returning to service of a furloughed employe or an employe on leave of absence without some other reason as stated in this opinion.

The record in this case shows employe had varicose veins, along with several other defects. Employe's doctor, in June, 1940, stated he was then of the opinion that O'Neil was able to return to work and recommended he be given a re-examination. The record also shows that at that time there was no further need for additional machinist helpers at Hornell.

The carrier was justified in requiring the employe to submit to examination in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1941.