

Award No. 548

Docket No. 534

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 EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Rule 17 (c) of the General Rules of the Shop Crafts' Agreement, on the Erie Railroad Company, and Award No. 368, Docket No. 350, of the National Railroad Adjustment Board, Second Division, was violated by the Erie Railroad Company, when Frank Babitz, furloughed machinist helper, was compelled to submit to a physical examination before being allowed to assume duties as a machinist helper at Hornell, New York roundhouse; that his name be placed on the machinist helpers' roster with the date of November 10, 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 November 10, 1939, Frank Babitz, furloughed machinist helper from Seacaucus, N. J., was called 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 he failed to pass at that time, according to the local supervision.

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

“(c) When forces are restored, senior employes, who were laid off, will be given preference in returning to the service, if available within a reasonable time, and shall be returned to their former positions, if possible; regular hours to be re-established prior to any additional increase in force.”

was violated by the management of the Erie Railroad Company, as the rule does not require that a furloughed employe must submit to a physical examination before returning to work.

During the Month of October, 1939, several vacancies developed in the machinists' craft for helpers in the roundhouse at Hornell, N. Y. There being no furloughed machinist helpers at this point, a request was sent to Seacaucus, N. J. for machinist helpers. Frank Babitz, who was furloughed as a machinist helper at Seacaucus, N. J. happened to be one of the helpers reporting to Hornell on this request, and upon reporting he was notified that he would have to submit to a physical examination before he would be allowed to work. He was examined on November 10, 1939, by the company

In support of this statement that physical re-examinations by the chief surgeon have been recognized and accepted, there is submitted herewith marked Exhibit B a report signed by Mr. John A. Marvin, secretary-treasurer of the General Chairmen's Association, who met with chief surgeon, Dr. J. F. Dinnen in his office at Cleveland, Ohio on November 17, 1936. The question of physical re-examination and the question of having men report to Cleveland for examination was discussed, and it was the opinion of all present that "the final disposition of these cases should be left to the chief surgeon instead of the local medical examiner."

We feel that the claim in favor of Frank Babitz, as progressed to the Second Division, that his name be placed on the machinist helpers' roster with a date of November 10, 1939, and that he be compensated for all time lost due to being held out of service account of this compulsory physical examination, is unjustified and not supported by the rules, and therefore should be declined for the following reasons:

1. As outlined on Exhibit A, Machinist Helper Frank John Babitz held no seniority rights as a machinist helper at Hornell, N. Y.; 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 submitted.

3. Physical examination at Hornell, N. Y. by local examining surgeon on November 10, 1939, determined that Babitz had defective eyesight, and that his eyes required treatment. As a result of the information obtained from the examining surgeon Babitz returned home and arranged for treatment with his local doctor, which local doctor later advised Chief Surgeon Dinnen that he had treated Babitz for his eye condition and that he had furnished him with corrective glasses.

4. On receipt of this verification Babitz was qualified physically for available work at Hornell and he reported for duty and was assigned to work December 6, 1939, on which date his seniority roster standing was established at Hornell.

5. 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 those who have defective vision.

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.

These findings apply to the following dockets:

499	531	537
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 employee's condition of such a nature as to be obvious and likely to subject not only such employee 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 employee or an employee on leave of absence without some other reason as stated in this opinion.

The record in this case shows employee had defective eyesight. Employee's doctor on December 1, 1939, certified that he had treated Babitz for his eyes and that he had furnished him with proper glasses.

The carrier was justified in requiring the employee 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.