Award No. 550
Docket No. 538
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 the practice of instructing employes to take physical examinations be discontinued and that George Martin, machinist helper, Hornell roundhouse, New York, be compensated for time lost when he was ordered to visit chief surgeon at Cleveland, Ohio, to undergo a physical examination.

EMPLOYES' STATEMENT OF FACTS: On October 4, 1939, George Martin, a machinist helper in the roundhouse at Hornell, N. Y. was sent to Cleveland, Ohio, for a physical examination by the company physician of the Erie Railroad Company.

POSITION OF EMPLOYES: That Award No. 368, Docket No. 350 of the National Railroad Adjustment Board, Second Division, was violated by the Erie Railroad Company when George Martin, machinist helper, was forced to go to Cleveland for a physical examination.

That Award No. 368, above referred to, is applicable to this case and reads as follows:

> "DISPUTE: CLAIM OF EMPLOYES: That the practice of compulsory physical examination among the mechanical department employes be discontinued and * * *."
>
> "AWARD: Claim in respect to compulsory physical examination sustained."

That the Erie Railroad violated this award when they compelled George Martin to submit to a physical examination; that George Martin is entitled to such compensation as he may have lost due to this compulsory physical examination, under Rule 22 (c) which reads as follows:

> "Employes disciplined by suspension or dismissal and found blameless will be reinstated and reimbursed for any wage loss suffered by them."

Therefore, the following Exhibits A-B-C-D-E are submitted to show that every effort has been made to settle this dispute on the Erie property and it has been properly progressed with the Erie management. Exhibits

4. The question of physical examination is fully covered in Exhibit C, and demonstrates very clearly that at no time has the railroad company negotiated a rule that would interfere with or abrogate the right and responsibility of the railroad company to require physical re-examinations.

5. This case is progressed by the employes to your Board based on a communication of February 16, 1940, but without investigation to determine the facts or to handle in accordance with requirements of the Railway Labor Act.

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 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:

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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 employes. Moreover, there is nothing in the record or in the history of the controversy between the employes and the carrier on this question that would indicate that the employes 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 employes, 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 employes 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 employes.

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.

Martin was qualified for work by chief surgeon on June 30, 1939.

Martin should be paid for time lost caused by examination on October 4, 1939.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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