Award No. 553
Docket No. 556
2-Erie-BM-'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. (BOILERMAKERS)

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: John J. Stoltman, boilermaker helper at Hornell, New York, on the Erie Railroad, be restored to his former position as boilermaker helper at the Hornell shops and be compensated for all time lost since the day that he reported for work on February 28, 1940.

That all compulsory physical examinations in the mechanical department, coming within the scope of the Rules and Rates of Pay for Mechanical Department Employes, effective May 1, 1929, be discontinued and that Award No. 368, Docket No. 350, be lived up to by the Erie Railroad Company and System Lines.

JOINT STATEMENT OF FACTS:

John J. Stoltman, boilermaker helper, Hornell, N. Y., Erie Railroad, employed June 13, 1927, previously employed at Avon, N. Y., January 12, 1925 and furloughed May 15, 1927 (at Avon).

He worked on February 20, 1940 and on his way home immediately after work collapsed and was unconscious and was taken to St. James Mercy Hospital and remained there until February 25, 1940. On February 28, he reported for work to the roundhouse where he had bid in according to his seniority account of the back shop shut down.

When he reported for work, he was sent to the local company doctor for physical examination. He was held out of service and notified to report to Cleveland, March 14, 1940.

As a result of this examination at Cleveland, he was held out of service and advised to report to the company physician at Cleveland again on June 14, 1940 for further examination.

Note: The above is classed a "Joint Statement of Facts" because the local committee and the local supervision agreed to it and signed it as per Exhibit I.

POSITION OF EMPLOYES: That Rule 24 (b) of rules and rates of pay for mechanical department employes, effective May 1, 1929, has been violated in this case. That the above referred to rule reads as follows:

"(b) An employe unavoidably kept from work will not be discriminated against.

6. There has been no demonstration by the employes' representatives of any unfair treatment or unjustified re-examinations of Stoltman.

For the reasons as outlined, the Second Division should deny this claim.

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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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 obivious 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.

Stoltman collapsed and was unconscious on February 20, 1940; reported for work on February 28, 1940. There is no question about his illness and incapacity to perform his work prior to the date he sought to return. Stoltman's family physician in a statement dated March 26, 1940, stated that from a clinical standpoint he found Stoltman in as good health as he was before he took care of him in his recent illness. The company's chief surgeon on August 24, 1940, contends that Stoltman's physical condition is such that he cannot be permitted to return to work at this time.

The carrier was justified in requiring an examination before the employe was permitted to return to work.

The record in this case shows the employe's doctor and the company's doctor cannot agree as to the condition of employe on and after March 26, 1940.

We cannot allow the claim for compensation for time held out of service. We consider the case should be remanded if the employe desires to return to work, with permission to the carrier to physically re-examine him, and if the company's physicians still report adversely, the matter should be handled by reference to an independent physician.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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