**Award No. 560**
**Docket No. 565**
**2-CI&L-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. 32, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

## CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY

**DISPUTE: CLAIM OF EMPLOYES:** That Machinist Daniel Edward Leslie was removed from the service of the Chicago, Indianapolis and Louisville Railway Company in violation of Rules 22, 36 and 42 of our current agreement and Section 6 of the Railway Labor Act, and should be paid for all time lost from May 24, 1939, until February 5, 1940, at which time he was restored to service, at the rate of 85¢ per hour.

**POSITION OF EMPLOYES:** Daniel Edward Leslie was hired as a machinist by the Chicago Indianapolis & Louisville Railway Company, November 3, 1909, and continued in that capacity until May 24, 1939, having about thirty years' service with said company, and that Daniel Edward Leslie had been away from duty a few days prior to May 24, 1939 on account of sickness.

When he (Daniel Edward Leslie) reported for work on May 24, 1939, he was told by the general foreman that he could not go to work and disqualified Mr. Leslie from further service with the Chicago Indianapolis & Louisville Railway Company, as the company considered him physically unfit to perform the duties of a machinist, claiming that they would be taking too much risk to retain him in service, and advised him that he would be held out of service pending his submitting to a physical examination and presenting to the carrier a doctor's statement that he was physically fit to perform his regular duties as a machinist. Arrangements were made by the carrier for him to appear at the Arnett Clinic (company's doctors) for examination May 26, 1939, in which he declined to concur. This requirement is in violation of Rule 42 of our current agreement.

**Rule 42:**

> "Applicant for employment will make out the Company's standard application blank and will not be required to take a physical examination."

This rule has been applied as written for the past 14 years and no employe in the mechanical department has been required to take a physical examination. The standard company application blank as agreed to in conference when this agreement was negotiated July 1, 1926 is hereto attached as Exhibit A.

effect of an employe's condition upon other employes, or upon the company, or upon himself." In the instant case it was clearly evident to claimant's superiors that there was an obvious effect upon himself, the possibility of such effect upon other employes, and in one instance upon the company.

**Award No. 367**

Under this award the carrier required furloughed and new employes to undergo physical examination. In the instant case the employe was required to take physical examination due to the apparent seriousness of his condition.

**Award No. 368**

Under this award the carrier instituted a program of physical examination for its employes. There is no such program on this property. Furthermore, under the award the claimant had been dismissed. In the instant case the claimant had not been dismissed, he had only been sent to the company doctor for an examination. In its findings the division stated there was nothing in the record to prove that the claimant's physical condition was impaired to the extent that he could no longer perform his work, whereas in the instant case there was evidence that Mr. Leslie's physical condition was impaired and that the carrier was justified in requiring him to report for a physical examination.

The carrier desires to call attention to the fact that the matter lay dormant for several months, during which time it was not handled with the superintendent of motive power. If the committee considered that Mr. Leslie was unjustly treated or that the agreement had been violated then it should not have delayed its handling with the superintendent of motive power until January 5, 1940; for the carrier showed good faith in offering to pay when the matter was called to the attention of the superintendent of motive power.

The Carrier submits:

1. There has been no violation of Rules 22, 36, and 42, of the agreement.

2. There has been no violation of Section 6 of the Railway Labor Act.

3. It was within its rights in requiring the claimant to report to the company doctor for a physical examination.

4. The claimant, with the assistance of his committee, was endeavoring to secure an annuity under the total and permanent disability clause of the Retirement Act, and during the adjudication of his application, the claimant, his committee and the carrier considered Mr. Leslie physically unable to perform service.

5. An award should be rendered in favor of the carrier.

**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.

There is no provision in this agreement providing for reexamination of 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.

The record in this case shows that employe had suffered from dizzy spells on several occasions and had laid off from work on account of them. He also had applied for an annuity under the total and permanent disability clause of the Railroad Retirement Act.

The evidence in the record shows that the carrier agreed to pay Leslie for the period he was held out of service between January 2, 1940, the date of notification of the Railroad Retirement Board's order that Leslie was ineligible for the annuity he sought, to February 5, 1940, the date he was returned to service.

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

AWARD

Leslie will be compensated for time lost from January 2, 1940, to February 5, 1940.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1941.