Award No. 728

Docket No. 706

2-SAL-MA-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

SEABOARD AIR LINE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That E. D. Barker, machinist apprentice, Jacksonville, Florida, be compensated for all wages lost from May 31, 1940 to July 22, 1940, account being injured while performing assigned duties on May 31, 1940, under Rule 42.

EMPLOYES' STATEMENT OF FACTS: At Jacksonville, Florida, the carrier employed E. D. Barker as a regular machinist apprentice on April 22, 1940. On May 31, 1940, the carrier assigned Apprentice E. D. Barker to grinding locomotive side rods in the grinding room, and to help him handle and hold these rods during the process of grinding, the carrier assigned Laborer Lucious Bradwell.

On May 31, 1940, between 11:00 and 11:30 A. M. or thereabout, Apprentice E. D. Barker in the process of grinding a rod, the said rod fell off the grinding table on Barker's right foot and fractured three bones therein. At the time of said accident Apprentice Barker was wearing goggles and Laborer Bradwell was absent.

Apprentice E. D. Barker was immediately sent to Dr. L. N. Moe, the carrier's physician for treatment. Apprentice Barker remained under the care of Dr. Moe until released for duty on Friday, July 19, 1940. On Monday, July 22, 1940, Apprentice Barker returned to work, which was in compliance with Rule No. 42 of the existing agreement.

The carrier has declined to allow Apprentice E. D. Barker compensation for time lost as a result of said injury.

POSITION OF EMPLOYES: We take the position that Apprentice E. D. Barker should be compensated for all time lost, in that,

1st—Rule No. 42 provides that employes injured while at work will be compensated for wages lost.

Rule No. 42 reads—

> Employes injured while at work are required to make a detailed written report of the circumstances of the accident just as soon as they are able to do so after receiving medical attention. **Proper medical attention shall be given at the earliest possible moment and employees shall be permitted to return to work just as soon as they**

It is an exceedingly interesting case and the referee is indebted to the parties for able and elaborate briefs on both sides.

The jurisdiction of this Division to decide this case is raised. The employes contend that under Rule 42 of the current agreement the claimant is entitled to recover. The rule provides for the following:

1st. Employes shall make detailed written reports of the circumstances of the accident immediately.

2nd. Proper medical attention shall be given at the earliest possible moment.

3rd. Employes shall be permitted to return to work as soon as possible without signing a release.

4th. Employes shall not be held to be entitled to compensation for wages lost after they are able to work.

5th. All claims for personal injuries shall be handled with the personal injury claim department.

Every element of Rule 42 was fully complied with. Mr. Barker made the required report. He received medical attention. He returned to work without signing a release. He did not remain off the job after he was able to return to work and his claim was handled by the personal injury department.

There is no place in the rule or in the current agreement that provides for settlement or for payment. Employes place great reliance on the words "pending final settlement of the case." The words "pending final settlement" do not mean payment thereof and under the contention of the employes in this case, there would be an absolute obligation on the part of the carrier to pay every employe who was injured while at work.

This is a claim to recover damages for personal injury. Such claims are neither covered by the agreement nor contained within the provisions of the Railway Labor Act under which the authority of this Board was established.

This question has been before this Board on different occasions and in all of the awards cited to the referee, the claims have been dismissed for want of jurisdiction. We call attention to Award Number 359 of the First Division, and Award Number 1097 of the Third Division.

This Board can come to no other conclusion than that it lacks jurisdiction and accordingly without prejudice to the merits of the controversy and without opinion as to the legal rights of the claimant in the proper forum, this claim is dismissed.

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.

The parties to said dispute were given due notice of hearing thereon.

That the Board is without jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.