

Award No. 1134

Docket No. 1047

2-Sou-MA-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the controlling agreement and particularly Rule 30, when on October 6, 1942, Machinists D. J. Doyle was not allowed to resume his service as a machinist in accordance with his seniority rights as such, at Macon, Georgia.

2. That the carrier be ordered to pay Machinist D. J. Doyle the sum of \$1,060.24, which represents the time he was improperly held out of service from October 5, 1942 to March 17, 1943.

EMPLOYEES' STATEMENT OF FACTS: On October 3, 1942, D. J. Doyle reported for work at Macon, Ga., as a machinist. He was denied this right by the master mechanic. The master mechanic took the position that this man would have to report to the company surgeon for a physical examination, prior to returning to the service of the carrier. This man was held out of the service until March 17, 1943. The seniority date of Machinist D. J. Doyle at Macon, Georgia is December 10, 1926.

The controlling agreement is dated effective March 1, 1926.

POSITION OF EMPLOYEES: It is submitted that Machinist Doyle, hereinafter referred to as the claimant, was subject to all the terms of the controlling agreement during the period of October 3, 1942, to March 17, 1943, to exactly the same extent as he was on and subsequent to March 17, 1943, and as he is today.

This claimant's service rights within the meaning of Rule 30, captioned "Seniority of Employees" as well as his service rights within the meaning of Rule 21, captioned "Employees Unavoidably Absent," in part reading—

"In case an employee is unavoidably kept from work, he will not be discriminated against"

were violated by the carrier on each and every date he was held out of service during the aforesaid period.

In substantiation of the firm conviction that the carrier did violate the applicable provisions of the aforesaid controlling agreement and that its action otherwise in holding this claimant out of service was without the rule of reason even in the absence of any agreement whatsoever, there is submitted herewith copy of correspondence identified as Exhibits 1 to 8, inclusive. Ex-

CONCLUSION:

The carrier has shown that it did not violate any rule of the controlling agreement, and particularly did not violate Rule 30, the only rule cited by the petitioner.

The carrier has shown that there is no rule or practice, or consideration in equity, that would entitle Doyle to the payment claimed.

The carrier has shown that it pursued a reasonable attitude at all times toward the restoration of Doyle to its service, and made every reasonable concession, and in fact, finally, because of the manpower shortage, made a greater concession that would have otherwise been justified.

The carrier has shown, by other awards of this Division, that, consistent with the principles therein enunciated, it was fully justified in all of its actions, rulings and orders in this case.

For all of which, this claim should be, in all things, denied.

Mr. D. J. Doyle, Machinist,
Savannah, Georgia.

Macon, Ga., May 28th, 1940
File 39-D.

Dear Sir:

You are carried on our seniority list of Machinists as of Dec. 10th, 1926.

Should we require additional machinists, please advise if you would desire to protect your seniority and if you wish to retain your name on the seniority list.

Yours truly,

(s)—T. E. Gary,
Master Mechanic.

(Carrier's Exhibit No. 1.)

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.

A requirement that an employe must submit to a physical examination on returning to work after a furlough has been held in numerous awards to be arbitrary. When, however, an illness has intervened and it is apparent that the return of an employe to his work may constitute a serious hazard to himself or others, the carrier acting in good faith has the right to require a physical examination. This is such a case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1946.