

Award No. 1150

Docket No. 1083

2-LV-CM-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carman Tony J. Lattari has been unjustly dealt with due to having been deprived of his service rights since December 16, 1945.

2. That the aforesaid employe is entitled to be returned to work with all service rights restored and to pay for all time lost since December 16, 1945.

EMPLOYEES' STATEMENT OF FACTS: Award No. 1041 of this Division ordered the carrier to reinstate Tony J. Lattari, hereinafter referred to as the claimant, on or before November 23, 1944, with seniority rights restored.

The carrier has declined to make effective the Award and the Order of this Division to this claimant.

The carrier has declined to cooperate with the carmen's union in restoring this claimant to available light work in his craft, namely at least, as one specific position, the material job in the steel yard, to which he is physically, mechanically, and by service rights qualified to perform.

This claimant entered the service of the carrier as a carman helper at Sayre, Pennsylvania, on October 18, 1928, and was promoted from that classification to the classification and pay of a carman on April 4, 1941. Set-up carmen helpers to carmen in the service junior to this claimant follows:

Name	Seniority Date to Carmen Helper	Date Set-up	Assigned to Class of Work
John J. Alexander	6- 1-34	4- 7-41	Rivet Driver
P. Alexander	6- 1-34	4- 7-41	Coupler Inspector
A. F. Mancone	11-16-33	4- 7-41	Coupler Inspector
Q. A. Bruno	8- 3-38	4- 7-41	Fitting-up
H. B. DeHaven	4- 1-26	4- 7-41	Inspector and Fitting-up
C. W. Gordon	3-22-23	4- 7-41	Tool Room Attendant
W. V. Sidey	10-19-39	4- 7-41	Rivet Driver
Angelo Smith	6- 1-34	4- 7-41	Fitting-up
A. Aillanti	2- 8-40	4- 7-41	Rivet Driver
Nicholas Onofre	5-16-34	4-21-41	Fitting-up
A. Antonetti	6- 1-34	5-24-41	Inspector and Fitting-up

running, climbing cars, etc. It was the conclusion of the examining surgeon that Mr. Lattari "should be kept at such duties that will keep him on the ground at all times," as expressed in report of associate chief surgeon, Doctor Hawk, of November 24, 1944, copy of which is submitted. In view of the physical condition of Mr. Lattari, we could not restore him to a car inspector's position to jeopardize his own or the safety of other employes, and there were no other positions in the carmen's craft, where he holds seniority, which he could assume without the same safety being involved.

POSITION OF CARRIER: The facts of record in this case show Mr. Lattari has a heart condition which would jeopardize his own safety and that of others if he were permitted to work as car inspector. We could not be expected to endanger our employes by permitting him to be so employed, nor could we be expected to create a position of light work, such as he would be able to perform, when the need for such a position does not exist, merely to return an employe to service who is suffering from a physical disability such as Carman Lattari. To do so would violate the principle of safety and impose a burden on an employer beyond any reasonable requirement. We also could not transfer Mr. Lattari to a position of a nature that he might be able to fill in some other craft, by permitting him to displace an employe with seniority in that craft, as he holds seniority only in the carmen craft, and to do so would violate the rules of such a craft.

In this case, the Carrier endeavored to restore Mr. Lattari to position of car inspector, but he could not pass the required physical examination and, therefore, the carrier could not assume the responsibility of placing him on a position which would jeopardize his own or the safety of others.

The opinion of the examining company surgeon, Doctor Hawk, as to the physical condition of Mr. Lattari, is confirmed on the basis of report by other than a company surgeon who examined Mr. Lattari at request of the employes. This examination was conducted December 29, 1944, by Dr. R. L. Hamilton, Binghamton, New York, and copy of his report, December 30, 1944, was furnished to us by General Chairman Sellers, and copy of same is herewith submitted.

This is a case wherein the Brotherhood of Railway Carmen of America request the Second Division of the National Railroad Adjustment Board to set aside the professional judgment of a responsible physician, arrived at after physical examination of the individual involved, and restore a man to a position at the risk of his own safety and that of other employes.

The carrier holds that the Board should not be asked to assume a responsibility of this kind, unless the record shows the carrier acted in bad faith, arbitrarily and without just cause, and there is no such showing in this case.

We believe the action taken was justified, and respectfully ask that the Board sustain our action.

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.

The question involved in this case is whether or not Carman Lattari has become unable to handle heavy work. If unable to handle heavy work he should be given preference to such light work in his line as he is able to handle in accordance with the provisions of Rule 23 of the Agreement.

The Division is of the opinion that a further effort should be made to find employment for Lattari, and this case is remanded for a joint investigation for that purpose.

AWARD

This dispute is remanded in accordance with the above findings without prejudice to the rights of the parties, or either party, to resubmit the dispute if not disposed of.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1946.