

Award No. 1459

Docket No. 1388

2-C&EI-CM- '51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement Carman J. M. Kingery was unjustly dismissed from the service on June 8, 1950 and that accordingly, the carrier be ordered to reinstate him to all service rights and compensate him for all time lost subsequent to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carman J. M. Kingery, hereinafter referred to as the claimant, was employed as such by the carrier at its Oaklawn freight car shops with a seniority date of February 17, 1943, and his regularly assigned hours were from 8:00 A. M. to 4:30 P. M., five days per week, Monday through Friday.

Under date of May 19, 1950, superintendent of motive power, Mr. George E. Bennett, wrote the claimant as follows:

"You are hereby instructed to report to Dr. R. S. Westline, 334 W. 63rd St., Chicago, Illinois for physical examination at 10:00 A. M., Tuesday, May 23, 1950."

and this is affirmed by a copy thereof, submitted herewith and identified as Exhibit A. Claimant declined to report to Dr. Westline and on May 26, 1950, he was formally charged with insubordination and instructed to appear in the office of the master car builder at Danville, Illinois, May 29, 1950, for a hearing on said charges, all of which is affirmed by General Car Foreman D. L. Cronkhite's letter of May 26, 1950, a copy of which is submitted and identified as Exhibit B.

At the request of claimant, the hearing was postponed until May 31, 1950, and a copy of the hearing record is submitted and identified as Exhibit C.

On June 8, 1950, General Car Foreman Cronkhite notified claimant that effective at the close of his shift that day, he was discharged. This is affirmed by copy of Mr. Cronkhite's letter of June 8, 1950, submitted herewith and identified as Exhibit D.

the light of all the circumstances in this case, a requirement that claimant submit to a physical examination cannot be held to be discriminatory, arbitrary, or unreasonable.

It has been held that it is not the function of the Board to substitute its judgment for that of the carrier (see Award No. 4068, Third Division, Referee Edward F. Carter). The agreement rules do not prohibit a requirement that employes be required to submit to a physical re-examination. In the light of the facts in this case, such a requirement was neither discriminatory nor unreasonable. Claimant was afforded a fair and impartial investigation, with representatives of his choice present. The evidence of record establishes beyond a shadow of doubt that claimant was guilty of gross insubordination in arbitrarily and stubbornly refusing to obey the explicit and reasonable instructions of his superiors. Under the circumstances, it cannot be said carrier's action in assessing discipline was arbitrary, capricious, or in abuse of its discretion.

The facts of record do not warrant an affirmative award and we respectfully request that the claim be denied.

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.

Claimant is a carman who entered the service of the carrier on February 17, 1943. On June 25, 1945, he injured his left shoulder and received extensive medical treatment. It was determined that claimant was suffering from a form of arthritis which had been aggravated by the injury. It was determined, also, that he had suffered a 38% permanent loss of use of the left arm for which he was paid. He was returned to work on September 24, 1945. On April 6, 1948, claimant strained his right shoulder and arm for which he received treatments and examinations. It was determined that he was suffering from osteo-arthritis. He was returned to work on June 21, 1948. On May 31, 1949, claimant was laid off in reduction of force. On April 26, 1950, he was recalled to service. On May 4, 1950, he reported for work.

The record shows that on May 12, 1950, claimant was directed by the general freight car foreman to report to the chief surgeon for a physical examination. Claimant refused to do so. He was thereafter notified by the superintendent of motive power in writing on May 19, 1950, to report to the chief surgeon for a physical examination. He again refused to do so. At the investigation, claimant admitted that he refused to report for either of these physical examinations as directed. He was dismissed from the service for insubordination.

The investigation appears to have been held in accordance with applicable rules of the agreement. Claimant was present and admitted that he refused to comply with carrier's directions that he report for a physical examination. This constitutes insubordination and warrants the imposition of discipline.

It is the position of the claimant that the agreement does not require him to take physical examinations and that he could therefore refuse to comply with directions with respect thereto. We desire to point out that the supervision of employes is in management. Directions of the carrier must be obeyed if the railroad is to be efficiently operated. The burden rests

upon management to comply with collective agreements entered into by the carrier and its employees. If carrier violates the agreement the Railway Labor Act provides the recourse that the employe or organization may pursue. The directives of the carrier must, however, be followed. Utter confusion would result if each employe were permitted to determine for himself if directions received were in accord with the collective agreement. A failure to carry out the directions of the carrier, unless they exceed all bounds as to reasonableness, constitutes insubordination. The case against claimant was established by his own admissions. He is subject to discipline.

Although not controlling here, we think carrier was within its rights in ordering claimant to report for a physical examination. He was 69 years of age. He had suffered previous injury which had aggravated a chronic disease of the joints. It would seem that in the exercise of care in such a case that the physical condition of such an employe should be closely followed. The claimant was not justified from any viewpoint in refusing to follow carrier's instructions to report for a physical examination. The refusal was willful and claimant fully understood what he was doing. We cannot say that carrier acted capriciously or arbitrarily in dismissing claimant from the service.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.