

Award No. 1464
Docket No. 1379
2-MFGR-MA- '51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**INTERNATIONAL ASSOCIATION OF MACHINISTS,
RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.
(Machinists)**

MANUFACTURERS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the controlling agreement was violated when carrier declined to restore to service the claimant, Charles R. Holden.

2. That the carrier be ordered to restore the claimant to service, seniority unimpaired, and in addition he be compensated at the assigned rate of machinists for all time lost as a result of illegal suspension.

EMPLOYEES' STATEMENT OF FACTS: Machinist Charles R. Holden, hereinafter referred to as the claimant, was on date of October 10, 1941, employed by defendant carrier as a machinist. The claimant continued his employment with the carrier until March 15, 1947 on which date he was furloughed under provisions of Rule 13 of the current agreement.

Under date of July 30, 1949, the carrier advised the claimant by letter to report at the office of master mechanic on or about August 13 for the purpose of arrangement for restoration to service.

In compliance with instructions the claimant reported to Missouri Pacific Hospital for physical examination. On basis of report of medical examiner carrier notified the claimant that he was disqualified for further service with the carrier.

POSITION OF EMPLOYEES: It is submitted that no rule of the current agreement provides for physical examination of furloughed employes when restored to service.

Rule 13, paragraph (b):

"In the restoration of forces, men with seniority ranking who have been laid off shall be given the preference of re-employment if available, provided they return within a period of thirty days, and they shall be returned to their former positions."

does provide that in restoration of forces seniority shall govern.

It is our further position that if the carrier were authorized to require physical examination of furloughed employes being restored to service, which we deny, they failed to develop that the claimant's vision was in less

Inspector Pritchard was removed from the service of the carrier due to his physical condition. Claim was submitted to your Board for his reinstatement to service and pay for all time lost.

Referee Harold M. Gilden participated in making Award No. 1288. The findings of the Board concluded with the following:

"If, after examination, Pritchard is found to be in suitable condition to perform his duties, he should be reinstated to active service, with seniority unimpaired, but without compensation for time lost.

AWARD

Claim remanded for settlement consistent with the above findings."

In the above cited Award, your Board declined to order the carrier to reinstate Pritchard until ". . . found to be in suitable condition to perform his duties." If found to be suitable ". . . by a report from a thoroughly qualified impartial doctor," reinstatement would be ". . . without compensation for time lost."

Mr. Holden was examined by a "thoroughly qualified impartial doctor" and found not "in suitable condition to perform his duties."

Therefore, even though carrier has proven conclusively that there is no basis for the claim, and without prejudice to its position that the Board is without jurisdiction, should consideration be given to the merits, the Board should adhere to the principle handed down in Award 1288, i.e. (a) not require this carrier to work a person not physically suitable and (b) not allow compensation if restored after being found suitable by thoroughly qualified impartial doctor.

Carrier is uninformed as to the arguments the petitioner will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to said ex parte submission or any subsequent oral arguments or briefs petitioner may submit in this dispute.

In conformity with Circular No. 1, dated October 10, 1934, that part reading:

"Position of Carrier: . . . all data submitted in support of carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute."

Carrier affirms it has presented to General Chairman J. A. Keller of the International Association of Machinists its reasons for not re-employing Mr. Holden, as the record herein shows, but cannot affirm further since the dispute submitted to your Board by petitioner has not been submitted to this carrier.

Further in conformity with said Circular No. 1, carrier declares that petitioner has not submitted to it, in full or in part, any claim, data, argument or other matter in support of position of employes. Hence, any affirmation that petitioner may make that it has done so is entirely erroneous and misleading and without force or effect.

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.

On the evidence of record it is the opinion of this Division that with glasses the claimant's vision can be corrected to 20-20 in both eyes, therefore, he shall be reinstated with seniority unimpaired, without pay for time lost.

AWARD

Claim adjusted in accordance with the above findings without prejudice to future cases.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July, 1951.