

Award No. 1492
Docket No. 1413
2-SP(PL)-MA-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement Machinist F. L. Higgins has been unjustly deprived of his seniority service rights since September 28, 1949.

2—That accordingly the carrier be ordered to compensate this employee for all time lost until he is restored to all service rights accruing to him as of the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Machinist F. L. Higgins, hereinafter referred to as the claimant, was employed by the carrier at Tucson, Arizona, as a laborer on July 3, 1941 and he remained in the service as such until he resigned on February 2, 1942.

The carrier again employed this claimant on May 15, 1942 as a machinist helper and promoted him in April, 1943 to the position of a machinist helper apprentice. The claimant completed his apprenticeship in May, 1947 and thereafter was retained in the service as a machinist by the carrier until January 29, 1949 when he was laid off in a force reduction.

The claimant passed all physical examination requirements of the carrier upon entering the service thereof as reflected above until he was recalled for and removed from service on September 28 because of having failed to pass some physical examination on September 26, 1949, to which the carrier thought he was subject. On September 26 the claimant performed eight hours' service for the carrier and September 27 and 28 were his assigned rest days. However, on September 28, 1949 the claimant was advised that he could continue in the service as a machinist upon signing an agreement waiving the benefits of the Hospital Department. Since September 28, 1949, the above offer of settlement has been affirmed thereto by the carrier's highest designated officer that the claimant would be restored to service as a machinist in accordance with his seniority standing as a machinist upon signing a waiver of the benefits of the Hospital Department. This standing offer of settlement on the property is not acceptable to either the claimant or his organization.

The carrier's Doctor Flood, when examining claimant on or about September 25, 1949, admitted that claimant was physically able to perform his machinist duties. This fact is sustained by Dr. G. B. Stewart, Exhibit A, and further sustained by both Doctors, including the carrier, in Exhibit A-1.

5. The claimant, entirely on his own volition, chose to deprive himself of the opportunity for continued employment; and
6. By recognized authority has shown that even though there is no rule in an agreement between a carrier and its employees relating to physical examinations, and an unwritten policy had been adopted by a carrier requiring physical re-examination of employees who are absent from service for more than thirty days, no violation of any rule of the agreement is violated by the requirement for such physical examinations,

the carrier is confident the Board will deny the claim, and the carrier respectfully requests that the claim be denied on the showing it has made that the claim in its entirety is without merit.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was a laid-off machinist recalled to service on September 26, 1949 but disqualified for work because of a fungus infection of his left lung being revealed by a physical examination conducted on said date.

On July 10, 1950, the claimant's personal physician verified this infection with the added comment, however, "... if the lesion ... be well stabilized ... no objection, for health reasons, that this man could not return to his former occupation as a machinist."

This is not a discipline case requiring an investigation before claimant could be disqualified for service. He is entitled, however, to make a claim if he feels that he was unfairly treated.

The evidence is sufficient to hold claimant out of service for the purpose of determining if he is, after recall to service, physically qualified to perform machinist's work; therefore, the claim is remanded with directions that the claimant be examined by competent physicians, a neutral physician if necessary, to determine his physical condition. If it be found that claimant is not physically qualified, the claim will stand denied. If it be found that the claimant is physically qualified, the claim will be adjusted for the period that he is found to have been qualified to perform machinist's work.

The foregoing affirms the arrangement agreed to by and between the parties as indicated by their letters of April 25, 1950, May 16, 1950 and May 18, 1950, and for this reason this award is limited to the particular facts of this case.

AWARD

Claim remanded per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1951.