

Award No. 1531
Docket No. 1428
2-SP(PL)-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Coach Cleaner Henry L. Dillard was unjustly deprived of his seniority rights during period August 30, 1949 to October 24, 1949 inclusive.

2. That accordingly the carrier be ordered to compensate the aforementioned coach cleaner for all time lost during the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Henry L. Dillard, hereinafter referred to as the claimant, was employed as such at Tucumcari, New Mexico. On January 31, 1949 the claimant was furloughed account of reduction in forces. The claimant passed all physical examination requirements of the carrier, until he was recalled for and removed from service on August 30, 1949 because of having failed to pass some physical re-examination on August 30, 1949 to which the carrier thought he was subject. As a result of this physical re-examination the claimant was held out of service. On August 30, 1949 arrangements were made for the claimant to be examined by a disinterested physician, Dr. Warner, who fully examined the claimant and was unable to establish any disability which would prevent him from performing his duties which is supported by letter from Dr. Warner, dated August 30, 1949, submitted herewith and identified as Exhibit A. Carrier's Dr. Washburn's letter of September 15, 1949, submitted herewith and identified as exhibit B sets forth the alleged physical ailments found by Dr. Brown on August 30, 1949. The claimant was called for another examination on October 24, 1949 and resumed work on that date.

This dispute has been handled with the carrier in accordance with the provisions of the agreement of April 16, 1942, as subsequently amended and as revised effective September 1, 1949 with the result that the highest designated carrier officer to whom such disputes are subject to appeal has declined to adjust said dispute.

POSITION OF EMPLOYES: It is submitted that when the claimant was recalled for service on August 30, 1949, it was in compliance with Rule 29 (d) of the controlling agreement, reading:

August 30, 1949, justified the chief surgeon's actions in deferring his return to active duty. Immediately after it was determined by the chief surgeon that claimant's physical condition had improved to such an extent that his return to service would not be a hazard to his fellow employes, or himself, the chief surgeon released him for active service. Under the circumstances there is no warrant for claiming that the carrier acted otherwise than within its duty in the situation, and whatever loss the claimant suffered was the consequence of his own misfortune and not due to an act of the carrier.

The carrier is confident that the Board will deny the claim, and respectfully requests that this be done on the showing that 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 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 August 30, 1949, claimant, a coach cleaner, who had theretofore been furloughed on account of reduction in forces, submitted to and took a physical examination with the result the company's physician certified he was not physically qualified for return to service. We are told this certification was based upon the premise claimant was suffering from a heart condition, extremely low blood pressure and a very rapid pulse. In any event because of such certification he was held out of service from the date first mentioned until October 30, 1949, when he was permitted to go back to work as a coach cleaner because the same physician, after reexamining him on October 24, 1949, found him to be physically qualified to perform that work. Since October 30, 1949, he has remained in the carrier's service in the capacity of a coach cleaner, performing the work of his assignment in a satisfactory manner.

In support of his position he was unjustly deprived of his seniority rights during the period of time in question claimant has produced a letter from his own physician stating he examined claimant on August 30, 1949, and that he was unable to detect any impairment in his physical condition other than a slight astigmatism which could easily be corrected with glasses. Also in evidence are statements of diverse persons to the effect that during the period of time involved claimant was able to and did perform hard manual labor. The only evidence adduced by the carrier on this point was the company physician's certificate of disqualification and a statement by its chief surgeon to the effect he had reviewed such physician's examination report and that in view thereof he could not recommend claimant's acceptance for return to duty, notwithstanding he had received and given consideration to a copy of the letter written by claimant's physician.

When the foregoing evidence is carefully considered, and viewed in the light of the fact that within 60 days after disqualifying him for service as a coach cleaner on account of a heart condition, extremely low blood pressure and a very rapid pulse, the same physician found that he was physically qualified to fill a like position, we are convinced the carrier's action in holding claimant out of service resulted in unjustly depriving him of his seniority rights and the compensation he would otherwise have been entitled to receive as coach cleaner. Therefore it is ordered that all seniority rights lost by him as a result of that action be restored and that he be paid the difference, if any, between what he would have earned as a coach cleaner and what he actually received as wages in other employment during the interim commencing September 1, 1949, and ending October 29, 1949.

In reaching the conclusion just announced this Division is fully cognizant of the fact its decision does not reach the issue, which both parties seek to have determined, whether Rules 29 (d) and 44 of the current agreement, or either of them, permit the carrier to require employes off on force reduction to take a physical examination before being restored to service. Our duty, under the Railway Labor Act, is to decide disputes growing out of the interpretation or application of agreements on the basis of the claim submitted for decision. Moreover, as we understand that duty, we are not permitted to reach out and pass upon an issue which is not within the scope of the claim, simply because the parties desire that it be determined. In the instant case the claim is that the claimant was unjustly deprived of his seniority rights during the period of time in question and the record makes it crystal clear that he was held out of service because, after having submitted to a physical examination, he was disqualified on account of physical inability to work, not because he had refused to take such an examination. Under such conditions and circumstances we feel it would be improper to pass upon the issue just mentioned and hence purposely refrain from doing so.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1952.