

Award No. 1590

Docket No. 1522

2-ACL-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Carman Welder Theodore Jones was unjustly suspended from the service effective at the close of his day's work on December 26, 1950 until he was restored to service on May 14, 1951 and that accordingly the carrier be ordered to compensate this employe for all of said loss of wages.

EMPLOYES' STATEMENT OF FACTS: The carrier employed Theodore Jones, hereinafter referred to as the claimant, as a carman at Jacksonville, Florida, and assigned him in active service to welding at 8:30 A. M. on December 11, 1950. However, this claimant, as an applicant for employment was first examined and approved for service by the carrier's medical department. The claimant thus continued in the service daily as a carman until the conclusion of his day's work on December 26 when he was removed from the service on the advice of the master mechanic orally conveyed to him by the car foreman.

The claimant was not given any specific reason for his removal from the service; nor was he accorded any investigation or hearing and neither was the local chairman of the carmen given any advice of the change made in the force of carmen on December 26, 1950.

This dispute has been handled in conformity with the provisions of the current agreement (effective November 11, 1940 with Revisions and Supplements Effective as Shown. Reprinted March, 1950) with the following results.

(a) That subsequent to the refusal on May 8, 1951, of the General Superintendent, Motive Power and Equipment, to restore this claimant to service and compensate him for all time lost, the claimant was restored to service on May 14, 1951, but without pay for the time lost and without advising the undersigned of such action.

tend or purport to extend to an investigation of the qualifications of an applicant for employment." There is not now and never has been any question as to the facts surrounding Mr. Jones' release during the period in question.

This carrier has for many years had standards as to age, education and physical fitness which persons seeking employment in the different crafts must meet before they will be accepted for employment. These requirements vary with the different crafts and have been adopted as standards with the view of employing persons physically and mentally fit to efficiently and safely perform their work. To carrier's chief surgeon is delegated the responsibility of passing on the physical fitness of all applicants for employment as well as those already in the employment. In his judgment, Mr. Jones, on account of his physical handicap, was not capable of performing his work safely and efficiently and the chief surgeon, therefore, in what he was convinced was the proper discharge of his responsibility, disapproved claimant's application. Later when he was advised by our local people that claimant was capable, even with his handicap, of carrying on his work efficiently and safely, carrier's chief surgeon approved claimant's application as he respected our local people's recommendations and realized that in approving the application he was not only cooperating with our local people but also assisting Mr. Jones in obtaining employment in keeping with his ability acquired through his determined efforts in spite of his handicap.

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 Theodore Jones applied on December 4, 1950, for employment with the carrier at Jacksonville, Florida, as a carman welder. He signed carrier's Application Form 127 and in so doing agreed that his employment would be temporary until his application had been approved as to references and had been accepted by the carrier's Chief Surgeon as to physical fitness.

On the day of his application Jones was examined and approved, subject to the Chief Surgeon's decision, by the carrier's local medical examiner, the latter's report then being sent to Wilmington, North Carolina, where the Chief Surgeon was located. The carrier permitted Jones to begin work on December 11, 1950. On December 21 the Chief Surgeon disapproved his application, and on December 26 carman Jones was so notified. At this time Jones was not told of the specific reason for his release. It appears that it was not until his claim had been progressed for some time on the property that the carrier stated its reason—stiffness in the ring and little fingers of Jones' right hand, which the Chief Surgeon was said to have believed would impair Jones' working efficiency.

The carrier asserts that because men were scarce and Jones had demonstrated his efficiency in spite of the alleged handicap, its supervisory people at Jacksonville tried to get the Chief Surgeon to reverse his decision. No date is assigned to this effort, but the carrier appears to wish us to infer that it was soon after Jones' release. The Chief Surgeon did finally approve Jones' re-employment, and the latter began work May 14, 1951.

The organization challenges the carrier's statement that the stiffness of Jones' fingers was the real reason for his release on December 26, 1950. No other reason, however, is suggested.

In our determination here the principles and reasoning developed in Award 1589 are applied to the facts of the instant case. Accordingly we rule against the organization's contention that this is a discipline case subject to the provisions of Rule 21 of the parties' agreement. But again we are obliged to consider whether the carrier fulfilled the obligation that it assumed when it entered into the agreement of Form 127 with carman Jones.

In this case, as in the one involved in Award 1589, we find that the carrier failed to make a reasonable, well-founded decision in respect to Jones' physical fitness. We find further that, if our inference is correct in respect to the efforts of the carrier's Jacksonville supervisors to get Jones re-employed soon after his release on December 26, 1950, the Chief Surgeon waited an unreasonably long time to make his favorable decision.

We rule, then, that the carrier failed to live up to the obligation inherent in its agreement with carman Jones. Accordingly, we direct the carrier to compensate him at pro rata rates for all working time lost by him during the period covered by his claim. From the total of this amount shall be deducted all the wage income earned by him in other employment during this period.

AWARD

Claim sustained as 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 November, 1952.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 1590, DOCKET NO. 1522

We, the undersigned Carrier Members, dissent from the majorities' findings and decision in Award No. 1590, for the reasons expressed in our dissent in Award No. 1589.

C. S. Cannon
J. A. Anderson
D. H. Hicks
R. P. Johnson
M. E. Somerlott