

Award No. 2069

Docket No. 1970

2-UT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the Current Agreement Coach Cleaner Carrie Lee was improperly denied compensation for services performed on January 19, 20 and 21, 1955 and accordingly the Carrier be ordered to additionally compensate this employe in the amount of sixteen hours at the time and one-half rate plus eight hours at the pro rata rate on the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: Coach Cleaner Carrie Lee, hereinafter referred to as the claimant was employed by the Union Terminal Company, hereinafter called the carrier at Dallas, Texas on January 7, 1944.

Under date of January 14, 1955, claimant working 7:00 A. M. to 3:00 P. M. shift Friday through Tuesday rest days Wednesday and Thursday received a written notice signed by Mechanical Foreman J. D. Stanford, instructing her to report to Santa Fe Hospital at Temple, Texas Wednesday January 19, 1955, at 8:00 A. M. for physical examination.

The claimant left Dallas, on M. K. T. train No. 1 at 7:45 A. M. Wednesday morning January 19, arrived in Temple, Texas, about 10:40 A. M., same date entered the hospital and was examined by Dr. Ward, released from hospital on the afternoon of January 21, 1955, with a clear bill of health with a release to report to work Monday January 24, 1955. Copy of Employes Exhibit B, which is a letter from Dr. George P. Bain, Santa Fe Hospital Temple, Texas, is submitted herewith.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it. The agreement effective March 1st. 1938 as it has been subsequently amended, is controlling.

It is submitted that there is no rule in the controlling agreement or the Memorandum of Agreement March 1st. 1938, that permits the carrier to force an employe to spend his rest days and lose time to take a physical examination which the carrier might request.

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.

The case before us indicates that the carrier was on a "fishing expedition" when it required this claimant to report to Temple, Texas, for a physical examination.

Apparently the only thing physical which interfered with this claimant's ability to perform the work was her size. She was a woman of small stature at the time she was hired by the carrier.

Claimant was hired at a time when it was difficult to obtain employees. While it can be reasonably concluded that so short a person would not be hired for the job of coach cleaner in times of an abundant supply of employable persons, the fact remains that the carrier did hire the claimant and benefited from her services for several years. It appears to us that the carrier, in its desire to replace the claimant with a person whose capacity to perform the work would not be limited by size, chose to require the claimant to submit to a physical examination on the chance that such examination would disclose a disqualifying condition.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.