

Award No. 2165

Docket No. 1985

2-UP-SM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. (a) That under the current agreement the Carrier improperly restored to service on June 2, 1954, a junior Sheet Metal Worker Helper thereby damaging Sheet Metal Worker Helper Sterling S. Reynaud.

(b) That the Carrier further unjustly dealt with Sheet Metal Worker Helper Sterling S. Reynaud when it deprived him of his service rights.

2. That accordingly the Carrier be ordered to:

(a) Compensate Sheet Metal Worker Helper Sterling S. Reynaud for all time lost from the aforementioned date to February 8, 1955, on which date he went to work in another department of the Carrier as a Sheet Metal Worker Apprentice.

(b) Reimburse Mr. Reynaud for expenses account of having to make a trip from Provo, Utah, to Salt Lake City, Utah, to find out why he was not recalled in his turn.

EMPLOYEES' STATEMENT OF FACTS: Mr. Sterling S. Reynaud, hereinafter referred to as the claimant, was employed as a sheet metal worker helper by the Union Pacific Railroad Company, hereinafter referred to as the carrier, in the engineering department on the California-Utah (Los Angeles to Salt Lake City) Division on October 5, 1953. The claimant passed the required physical examination and his name was placed on the seniority roster, with the seniority date of October 5, 1953.

The claimant was regularly assigned Monday through Friday, rest days Saturday and Sunday. Claimant was in continuous service of the carrier until he was furloughed on January 8, 1954.

Mr. Robert M. Milner, a sheet metal worker helper with a seniority date of October 13, 1953, was recalled from furlough and restored to service on July 6, 1954. Mr. Milner is junior in seniority to the claimant.

responsibility of the carrier, but rather the result of claimant's own carelessness in failing to file an identifiable name and address at which he would be available for such recall and service.

The claimant cannot properly premise his claim upon his own failures. That part of the claim which is properly before the Board is without merit and should be denied.

3. Those portions of the claim that were not handled on the property and are outside the jurisdiction of this Division are likewise without merit.

While the carrier still maintains that the remaining portion of the claim as presented to the Second Division is not properly before the Board and should be dismissed because of the failure to present or handle it on the property, it is nevertheless submitted that, in any case, those portions of the claim are, likewise, totally without merit.

The claimant was held from service after September 9, 1954 on the basis of the findings and opinion of the medical examiner that claimant was physically disqualified for service because of a "pathological obesity." The carrier had every right to require such an examination as a condition of returning to service and to rely upon the opinion of its medical examiner that claimant was physically disqualified for such a return to service at that time.

No challenge of either the findings or conclusions of that medical determination has ever been made by either the claimant or the organization. On the contrary, the organization has virtually conceded the propriety of that determination and the carrier's reliance thereon.

Under these circumstances there can be no possible basis for a claim for pay for time lost during the period the claimant was held from service on the basis of an unchallenged medical determination that he was physically disqualified for a return to service at that time. The lack of merit of such a claim must have been obvious even to the organization as indicated by the failure to present or handle such a claim on the property and General Chairman Grant's virtual acceptance of that action as proper in his letter of January 31, 1955.

The claim for reimbursement of expenses for Mr. Reynaud's trip from Provo to Salt Lake City, Utah, is not supported or required by any provisions whatsoever in the agreement between the parties. It is clear that it was occasioned entirely by the claimant's own failure to properly indicate his name and address on the letter sent to the B&B supervisor. In any case, however, the total absence of any provision of the agreement providing for such reimbursement for such purposes would preclude the Second Division, which is limited in its jurisdiction to the interpretation and application of agreements, from giving favorable consideration to any such claim.

The claims presented herein are, accordingly, without merit and, if not dismissed, should be denied.

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 was first employed by the carrier in the Mechanical Department at Provo, Utah, on December 13, 1949. He was furloughed on September

29, 1953. On October 5, 1953, he was employed as a sheet metal worker helper at Milford, Utah. On January 8, 1954, he was again furloughed. On July 12, 1954, Robert M. Milner, a sheet metal worker helper who was junior to claimant, was recalled for service. Claimant was not recalled. On September 8, 1954, claimant made inquiry as to why he had not been recalled and it was discovered that he had failed to attach his name or signature to the notice that he desired to be recalled when work was available. Carrier corrected the error and prepared to recall the claimant. Pursuant to Rule 46 of the Physical Examination rules, claimant was required to take a physical examination. He was found to be 5'2" in height and weighed 200 pounds. He was disqualified for "pathological obesity." Claimant was later called to service in the Mechanical Department from which he had been furloughed prior to the time he had established seniority as a sheet metal worker helper. He was again examined and it was found that in the intervening period of approximately six months, he had reduced his weight to 177 pounds. He was found to be qualified and returned to service in the Mechanical Department on February 8, 1955.

The claim as handled on the property was for pay lost between June 2, 1954, when Milner was recalled, and February 8, 1955, when claimant was recalled by the Mechanical Department. No other claim appears to have been handled on the property. The failure to recall claimant was due to his own fault. By failing to place his name on the notice that he desired to be recalled, carrier had no knowledge of his desires. This loss was due to his own negligence in failing to comply with a long established practice and raises no obligation on the part of the carrier to compensate for his loss.

The carrier contends that all other parts of this claim were not handled on the property and were introduced into the dispute after an appeal was taken to this Board. The record sustains these assertions. Claims may not be presented here which have not been presented to the carrier and discussed on the property. The claim for pay after September 8, 1954, and the claim for travel expenses from Provo, Utah, to Salt Lake City, Utah, are not properly before the Board. Such portions of the claim are dismissed.

AWARD

Claims 1 (a) and 1 (b) denied.

Claims 2 (a) and 2 (b) are dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of July, 1956.