

Award No. 4510

Docket No. 4345

2-ACL-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(a) That, under the controlling Agreement, Car Repairer Helper M. W. Crews has been denied his contractual right to work since November 1, 1961.

(b) That accordingly the Atlantic Coast Line Railroad be ordered to restore him to service with seniority and vacation rights unimpaired and with pay for all time lost at the applicable rate since November 1, 1961.

EMPLOYES' STATEMENT OF FACTS: M. W. Crews, hereinafter referred to as the claimant, was employed as a carman helper by the Atlantic Coast Line Railroad, hereinafter referred to as the carrier, on June 8, 1943. The claimant was furloughed on September 23, 1960.

Bulletin No. 389, advertising an increase in forces in the Carrier's Waycross Georgia Shops was posted on October 26, 1961. The claimant was notified that he stood for work in accordance with his seniority and that as he had been out of service in excess of six months it would be necessary for him to undergo a physical examination. He was examined by Dr. Samuel Victor, company doctor at Waycross Georgia, prior to November 1, 1961 and was denied the right to return to work when the increase of forces became effective, on the basis of the physical examination by Dr. Victor. The claimant was overweight, had a hernia which he was born with and his blood pressure was 150/102 when he was employed by the carrier in 1943, consequently he was never accepted as a member of the relief department, he was however, approved for service. After being notified that the medical department was holding him out of service, he went to his family physician, Dr. W. E. Lee, Jr., Waycross, Georgia and was examined by him on November 27, 1961. He also went to Drs. H. A. Seaman and Simeon E. Sanchez for further examination on November 29, 1961. All three of these doctors pronounced him physically fit for work.

This carrier did not act arbitrarily or in bad faith when, on the advice of its chief surgeon, it withheld claimant from service due to his high blood pressure and obesity.

There was sound basis for the withholding of this man from service, and therefore, Carrier respectfully requests that your board deny this claim.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed as a Carman Helper by Carrier on June 8, 1943. On September 23, 1960, he was furloughed. Due to an increase in forces, posted October 26, 1961, Claimant was notified that he stood for work effective November 1, in accordance with his seniority, but since he had been out of service for more than six months, a physical examination was required.

After such examination, the Company physician refused to certify him for service based upon findings of overweight, high blood pressure and inguinal hernia. In the latter part of November, Claimant had three physical examinations by doctors of his own choice, and they pronounced him physically able to work.

Prior to this, in June, 1961, Claimant had been medically rejected for a temporary position by Carrier's medical department.

Claimant was examined by Carrier's physician on April 12, 1962 and again was rejected for service.

On October 5, 1962, Claimant was again examined by Carrier's physician, who approved him for service, although Claimant has not been in service due to the lack of an opening for him.

It is Claimant's contention that he was in the same good physical condition in April, 1962, in October and June 1961, and prior thereto as he was on October 5, 1962, and therefore the Carrier has been arbitrary and capricious in keeping him out of service.

We do not detail the findings of the Doctors which are contained in the record as submitted to us; suffice to say that there was sufficient reason for Carrier to accept the recommendations of its Medical Department in keeping Claimant out of service. In the absence of a showing of bad faith, or arbitrary or capricious conduct, we will not substitute our judgment for that of the Carrier in these matters. We find no such evidence here.

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AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.