

Award No. 4582
Docket No. 4381
2-JaxTerm-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 50, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

JACKSONVILLE TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That Harry Lovett, Car Cleaner, has been unjustly deprived of his employment rights since May 10, 1961 when he was refused re-employment, after recovery from an off duty accident which occurred on July 27, 1959.

(2) That claimant Harry Lovett be restored to service with all employment rights, including Health and Welfare, Vacation allowance, and be compensated for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: On July 27, 1959, Harry Lovett hereinafter referred to as the claimant, was struck by a produce truck while riding his bicycle home from work, causing injury to his left leg. This required the claimant to be hospitalized for a period of time, including an operation on his left knee which by May 10, 1961 had recovered to the extent he was physically able to resume his duties as a car cleaner, but was denied this right by the carrier.

The claimant entered service of the Jacksonville Terminal Company on January 9, 1941, and has maintained continuous employment relations since that time.

On May 8, 1961, claimant placed a bid on job numbered RC 11.

On May 11, 1961, master mechanic, Mr. A. C. Herrington notified claimant by letter of his declining to accept the above bid and refusing to return him to service.

This dispute has been handled with the carrier up to and including the highest officer so designated by the Company, with the result that he has declined to adjust it.

As no reply to above letter has been received, a telephone call to Chief Clerk Smith was made on November 8, 1962, asking if conference could be

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 were given due notice of hearing thereon.

In keeping with the Board's recommendations in Award 4434, Claimant Harry Lovett was given a work test on March 25, 1964.

A six man examining committee — comprised of three Carrier and three Organization members — witnessed and evaluated the work test. Both groups prepared and exchanged separate evaluation reports and also sent copies of their report to this Division.

The Board has objectively evaluated those reports and has determined that the Claimant cannot safely perform all his job duties. Accordingly, the Board cannot order the Carrier to reinstate the Claimant.

However, it must be understood that should the Claimant subsequently be able to meet the Carrier's work standards and safety standards — he shall be returned to service with his seniority rights and all other rights intact.

AWARD

Claim denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.