

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 13(a), when they denied Carman J. Davis' bid, dated September 10, 1971, for truck driver position at Omaha, Nebraska, placing the younger employee on this job.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to honor Carman Davis' bid and place him on the cline truck driver position as he was the oldest qualified employee in seniority bidding on the job.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The essential facts are not in dispute. Prior to August 5, 1971 Claimant was used from time to time (on an overtime basis) to drive a cline truck. As a result of a periodic eye checkup on August 5, 1971, Carrier's Master Mechanic determined that Claimant had difficulty with his color sense, and ordered local supervision at Omaha not to use Claimant in road service when truck driving was required. On September 5, 1971 the regularly assigned occupant of the road job died, and Claimant bid on the position. Claimant was the senior bidder, but was passed over because of his alleged color deficiency. Claimant then went to be examined by two private ophthalmologists. Their report is attached to the Organization's submission as Exhibit B and states:

"To Whom It May Concern:

This is to certify that Mr. John D. Davis was in our office today for a Color Vision test which he passed.

/s/ R. H. Rasgorshek, M.D."

"This is to certify that John D. Davis has normal color vision.

/s/ James J. Leahy, M.D."

As the result of these findings, Claimant was examined by Carrier's medical officer at Omaha on September 17, 1971, who determined that Claimant was not qualified to drive a truck because of color vision deficiency. After several conferences during the appeal process between Carrier and Organization, Claimant was referred to a Dr. John W. Pemberton, an ophthalmologist consultant for examination on October 27, 1972. In his report to Carrier's medical officer, Dr. Pemberton concluded:

"It is my opinion that Mr. Davis has a strong red-green, yellow-blue color defect. The discrepancy in the various physicians reports might be explained by the fact that he has a tendency to attempt to bluff his way through the color plates and thus may be able to get by on casual testing."

On the basis of Dr. Pemberton's report, Carrier concluded that Claimant was not physically qualified to operate a truck.

The Organization contends that Carrier violated Rule 13 (a) of the Agreement (seniority rule with respect to filling new vacancies) when it refused to assign Claimant to the position.

It is clear from the record before us that Carrier was not bound by the cursory one-line conclusions by Claimant's eye doctors that there was no deficiency in his color perception. There is a further assertion by the Organization that Claimant was also examined by a hospital association eye doctor. There is no evidence of those findings, save a reference to such an examination in Claimant's letter of September 22, 1971. This reference has no probative value and cannot be considered.

Under the circumstances, Carrier acted properly (with the Organization's tacit approval) to have Claimant examined further by an ophthalmologist. There is no basis for concluding that Carrier's action was arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.