

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

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
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(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company be ordered to restore Machinist Shirley P. Getty to duty as a Machinist, the position from which he is being withheld by Carrier after receipt of a medical evaluation certifying no physical disability or anything else which would preclude his return to his usual job.
2. That the Baltimore and Ohio Railroad Company violated the existing controlling agreement, Rule 33, by failing to disallow in writing within the time limits the claim instituted on December 9, 1974, for restoration to service of Machinist Shirley P. Getty.
3. That the Baltimore and Ohio Railroad Company violated the existing controlling Agreement, Rule 33, by failing to disallow in writing the appeal to Carrier's Highest designated officer within the applicable time limits.
4. That, accordingly, Machinist Shirley P. Getty be restored to duty as a Machinist and compensated from the date of October 10, 1974, (Claim of December 9, 1974) for all wage losses until restored to service and that he be made whole for all vacation rights, payment for Health and Welfare and Death benefits under Travelers Insurance Policy GA-23000 and all other service benefits that he would be entitled to under the Agreement.

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.

In order to resolve this dispute, it is not necessary to set forth the somewhat lengthy and confusing factual assertions. Suffice to say there are numerous charges and countercharges of time limit violations by both sides, allegations of deception and dissembling, contentions of bad faith, and suggestions of improper conduct on the part of Organization officials, Carrier officers and medical doctors.

Throughout all of the confusion a basic question is evident: Is Claimant presently physically capable of performing duty as a Machinist? In an effort to answer the question, this dispute shall be remanded to the property for a medical determination. We direct that a three doctor panel be established made of up Carrier's medical officer, Claimant's physician, and a neutral physician selected by the parties. The neutral physician selected must be well versed in the duties of a Machinist as they relate to this Carrier. The findings and conclusions of a majority of this medical panel shall be final and binding.

Because of the particular facts and circumstances of this dispute, there shall be no pay for time lost.

A W A R D

Claim disposed of per findings.

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 25th day of April, 1978.