

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United States
(and Canada
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- 1.(a) That the Louisville and Nashville Railroad Company withheld Carman Louis Starritt from service from May 31, 1981, through July 5, 1981, a total of 26 days or 208 straight time hours.
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Louis Starritt for 26 days or 208 hours at the straight time rate of pay.
- 2.(a) That the Louisville and Nashville Railroad Company denied Carman Louis Starritt his contractual right to operate the Corbin Wrecker as the Engineer at wrecks and derailments beginning June 2, 1981, through July 20, 1981, as listed below, and for each instance that the wrecker was called and Carman Starritt was denied his operators position as a Wrecker Engineer subsequent to July 20, 1981.
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Louis Starritt at the time and one-half rate of pay, the following instances where he would have earned as shown:

June 2, 1981	Wallins Creek	5 hours
June 3, 1981	Wallins Creek	5 hours
June 9, 1981	W. Yard Corbin	5 hours
June 12, 1981	Benefeild, Tenn	10½ hours
June 13, 1981	Benefeild, Tenn	24 hours
June 19, 1981	Scotchia Mine	5 hours
June 20, 1981	Scotchia Mine	16 hours
June 21, 1981	Scotchia Mine	10½ hours
June 22, 1981	Scotchia Mine	2½ hours
June 23, 1981	Scotchia Mine	10 hours
June 23, 1981	Morley, Tenn	2½ hours
June 24, 1981	Morley, Tenn	11 hours
June 28, 1981	SEW Yard, Corbin, KY	4½ hours
June 20, 1981	Bourne North	7 hours
July 1, 1981	Bourne North	4 hours
July 2, 1981	Bourne North	5 hours
July 19, 1981	Chad Yards	6½ hours
July 20, 1981	Chad Yards	16 hours

- (c) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Louis Starritt that which he would have earned had he not been removed from his position as Wrecker Engineer subsequent to July 20, 1981.

- 3.(a) That the Louisville and Nashville Railroad Company improperly removed Carman Louis Starritt from the Corbin, Kentucky Engine Carpenters Holiday and Miscellaneous Overtime Board on May 31, 1981.
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Louis Starritt for that overtime that he would have earned had he been allowed to retain his name on the Carmens Engine Carpenters Holiday and Miscellaneous Overtime Boards.

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 employees 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.

At the time of the instant dispute, the Claimant, a Carman, was over 76 years of age and his seniority date was September 2, 1922. The dispute arose at the Carrier's facility at Corbin, Kentucky.

On March 10, 1981, the Claimant underwent a physical examination to determine his physical ability to continue his employment. Based on the results of this examination, the Carrier's Chief Medical Officer, Dr. Mead, determined that Claimant was not medically qualified for unrestricted service as a Carman which included his assignment as a Wrecker Engineer. After Dr. Mead personally examined the Claimant on March 31, 1981 and received an indication that he was to retire in two (2) months, Dr. Mead authorized the Claimant's continuance in service for two (2) months or until May 31, 1981. Dr. Mead advised the Claimant that he was to visit his personal physician to consider resuming anti-hypertensive medication because of his elevated blood pressure. On May 18, the Claimant wrote to Dr. Mead, and among other things, he requested Dr. Mead to allow him to remain in service until September 2, 1981 which would give him a total of 59 years of service. In a telephone discussion with the Claimant on June 1, 1981, Dr. Mead informed him that he was medically disqualified for unrestricted service on his wrecker assignment but that he could approve a request for continuing his service to an inside desk job. The Claimant advised Dr. Mead that he was not interested in continuing employment under those conditions. Dr. Mead followed up his telephone discussion with a letter to the Claimant confirming that he was medically disqualified for unrestricted service on his wrecker assignment.

From July 6, 1981 to July 31, 1981, the Claimant began working as an "AAR write up man" which included half of his time spent at a desk and for the remainder of his time he performed miscellaneous duties. On August 3, 1981, the Claimant was discovered lying unconscious alongside the tracks near the shop area. He remained off the job during August, 1981 and then requested and was granted a 60-day leave of absence due to personal illness.

On November 4, 1981, the Carrier was informed by the Claimant's personal physician that he had been treated for a phlebitic condition since October 2, 1981 and that he was releasing him to return to service on November 9, 1981. After the Carrier obtained additional information regarding the Claimant's physical condition, he reported for work on November 24, 1981. In a follow-up report, the Claimant's personal physician recommended against any change in his work status.

Contrary to the position of the Organization, the Board concludes that the Claimant was not disciplined between May 31, 1981 and July 6, 1981; indeed, he was medically disqualified for unrestricted service on his wrecker assignment. Thus, Rule 34, which provides for the procedure to be followed when discipline is involved was not violated by the Carrier.

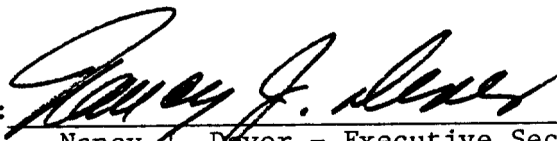
It is firmly established in the railroad industry that the Carrier has the right and the obligation to establish physical standards to determine the fitness of its employees. Absent a showing that the policy of the Carrier is unreasonable, or that it has been applied to the Claimant in an arbitrary, capricious, unreasonable or discriminatory manner, the Carrier's medical disqualification of the Claimant should not be disturbed. See Third Division, Award No. 6753. The record fails to establish such a showing. Moreover, in light of the Claimant's age and medical problems, the Carrier prudently and reasonably withheld the Claimant from service from May 31, 1981 to July 6, 1981 and prudently and reasonably restricted him to inside work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1984.