

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (Ada L. Smith
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

Claim and grievance in favor of Coach Cleaner Ada L. Smith, California Avenue, Chicago, Illinois, who was unjustly removed from service April 28, 1982, when she was unjustly disqualified for her position, account she is unable to wear the shoes required by the Carrier.

Claimant be compensated for all lost time and any benefits to which she is entitled from the date she was disqualified until she is reinstated to service, in accordance with Rule 35.

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 employes 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, Ada L. Smith, contends that she was unjustly removed from service because she could not wear the type of shoes required by the Carrier. She also claims that she was unjustly removed under the provisions of Rule 35, the disciplinary rule.

Claimant has a problem with her left foot. On April 20, 1982, she submitted a medical report to the Carrier which stated:

Mrs. Smith has a problem with her (left) foot that is aggravated by high top shoes. She will be evaluated by Podiatry at this facility.

Prior to this time the Carrier had had a number of injuries and periodic meetings had been held with the employees to emphasize safety. Claimant was among those attending such meetings. The employees were informed at these meetings that they must comply with the mandates of Rule 33 concerning the wearing of work shoes that provide proper ankle support. Claimant complied with this rule until March, 1982, when it was noticed that she was not wearing the proper footwear. She was informed that she would not be permitted to work if she continued to wear the type shoes that she was then wearing. She asked permission to visit Carrier's Medical Department which was granted. After her visit to the Medical Department she submitted the note from her personal physician. Shortly thereafter the Director of the Medical Department received a note from her personal physician which stated:

Mrs. Smith was seen in my office this date (April 27, 1982). Examination revealed limited subtalar range of motion with mild edema. Xray revealed degenerative joint disease about the ankle and midtarsal region of the foot. It is recommended Mrs. Smith wear a low quarter or below the ankle shoe which gives comfort to Mrs. Smith. Thank you.

After receiving this note Claimant was removed from service until it was determined that she could wear the proper footwear which was on May 27, 1982, on the stipulation that she wear the proper footwear.

The Carrier has submitted to this Board an earlier Award between the Railway Employees' Department and this Carrier, Award No. 6434, which had considered the issue of the applicability of Rule 25 to a medical disqualification. That Award held that a medical disqualification was not discipline and did not come within the terms of Rule 35. This Board sees no reason to depart from that well considered Award and will hold that medical disqualification is not discipline requiring an investigation before suspension.

The Carrier had determined that its safety rules should be enforced to prevent accidents. It had previously determined that coach cleaners must wear high top shoes for additional support. Nothing has been presented to this Board that would demonstrate that it is not in the interest of the employees or the Carrier to have this safety rule. The act of climbing in and out of railroad cars can be dangerous to the employee if safety is not exercised. Injury results in loss to both the Carrier and the employee. In the case of the employee it is the physical pain and disability. To the Carrier it is the potential financial liability of an on-duty injury or, at a minimum, loss of productivity from one of its employees. Rigorous enforcement of well intended safety rules helps to stem these injuries and consequent losses.

The Board finds that that the Carrier had an unmitigated right to exercise its prerogative to enforce its safety rule. The fact that the Claimant was unable to meet the mandates of the rule and to continue to work was an unfortunate circumstance, but one which had to be borne by the Claimant until her physical condition allowed her to return to work wearing the proper apparel.

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 7th day of August 1985.