

Award No. 271

Docket No. 268

2-MP-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman J. S. Chenery be reinstated with seniority rights unimpaired and compensated for all time lost subsequent to his suspension from service February 3, 1938.

EMPLOYEES' STATEMENT OF FACTS: On February 3, 1938, Carman J. S. Chenery, while regularly employed in the capacity of coach carpenter at St. Louis shops, was notified to come to master mechanic's office. On reporting, master mechanic advised him that he would have to take his pension. Carman Chenery informed master mechanic that he was not ready to take his pension and desired to work a while longer. The master mechanic then advised him that he was sending him to the hospital to take a physical examination. Subsequently, Carman Chenery was handed a letter over Master Mechanic Whalen's signature, advising him that owing to his physical condition, he was checking him out that evening and that he should go to the hospital for examination and not return to work until further instructed.

POSITION OF EMPLOYEES: Employees desire to preface their contentions by pointing out that under provisions of current wage agreement between Missouri Pacific Railroad Company and its employees (mechanical section thereof), certain rules are incorporated, setting forth procedure to be followed in the handling of grievances; the manner in which disciplinary measures may be applied; also, the requirement of applicants for employment. These rules are known as Rules 31, 32 and 38, and read as follows:

"Rule 31. (a) Should any employe subject to this agreement believe he has been unjustly dealt with, the case shall be taken to the Foreman, General Foreman, Master Mechanic or Shop Superintendent and Superintendent, each in their respective order, by the duly authorized local committee or their representative. Stenographic report of the investigation will be taken if requested; the aggrieved employe and his representative shall be furnished a copy.

(b) All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen or other employe representation.

(c) If the result still be unsatisfactory, the right of appeal shall be granted; the appeal to be made in writing to the Chief Mechanical Officer; conferences will be granted within ten days of application.

condition upon other employes, or upon the company, or upon himself. On the other hand, the Division has held that where there was no such effect, the company had no right to send employes to the hospital for a general checkup. The direct issue involved in this case was before the Second Division in Award No. 16 where the issue was the right of the carrier to carry out a general program of physical examination for all employes over sixty-five years of age. In that case, the conclusion of the Board, speaking through Referee Spencer, was as follows:

"The question of physical examinations has long been a bone of contention between carriers and employes. Carriers have insisted upon the right to conduct physical examinations for the purpose of determining the fitness and ability of employes for service. The employes, while stating that they would have no objection to a properly defined physical examination, have felt that carriers have resorted to it as a subtle device for discriminating against employes and for improperly reducing forces. It was in this atmosphere that the antecedent of Rule 42 came to be incorporated into the national agreement, and to receive the interpretation placed upon it by the United States Railroad Labor Board. The rule itself breathes the apprehension and suspicion of employes in the statement that 'applicants for employment will be required to make statements only as to their ability and address of relatives, and name and address of last employer.'

The Referee, in view of these circumstances and the decisions of the United States Railroad Labor Board, concludes that Rule 42, from the point of view of the carrier, is permissive as to the types of physical examinations therein mentioned, and prohibitive as to other types."

The issues in the present case are in direct line with that decision. Chenery had reached an advanced age, but there were no new signs of deterioration, beyond the supposition that at sixty-six he was not as capable as formerly in doing his work. His physical condition had not changed, and the order, sending him to the hospital for examination, was arbitrary. The rules do not sustain the right to send an employe to the hospital and hold him out of service under such conditions.

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.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1938.