

Award No. 544

Docket No. 527

2-Erie-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Rule 17 (c), General Rules of the Shop Crafts' Agreement, also known as Rules and Rates of Pay for Mechanical Department Employes, and Award No. 368, Docket No. 350, rendered on the 3rd day of August, 1939, by the Second Division of the National Railroad Adjustment Board, be lived up to, and the practice of compulsory physical examination for mechanical department employes be discontinued.

EMPLOYES' STATEMENT OF FACTS: Carman Thomas Simone was called to report for work at Jersey City October 30, 1939. Before being permitted to start work he was sent to the office of Doctor J. F. Moriarity, company physician.

POSITION OF EMPLOYES: That the action of the management in sending Mr. Simone to the doctor for physical examination is a violation of Rule 17 (c) which reads: "When forces are restored senior employes, who were laid off, will be given preference in returning to the service, if available within a reasonable time, and shall be returned to their former positions if possible; regular hours to be reestablished prior to any additional increase in forces." This was violated as the rule does not require an employe returning to service to take a physical examination. Mr. Simone served his apprenticeship with the Erie Railroad, and at the conclusion of his time, or soon after, he was laid off on account of reduction in forces. That Mr. Simone submitted to a physical examination under protest made in his behalf by the local committee.

The following exhibits are submitted as evidence that all has been done that is possible to settle dispute on the Erie property.

EXHIBIT A: Will show that the action of the Erie Railroad in failing to comply with Rule 17, and Award No. 368, Docket No. 350, was protested by Mr. Simone and his committee.

EXHIBIT B: Shows conclusively that the Erie Railroad does not intend to live up to that part of Award No. 368 as quoted in the claim of employes.

Award No. 368, Docket No. 350; "Dispute: CLAIM OF EMPLOYES: That the practice of compulsory physical examination among Mechanical Department Employes be discontinued, and * * * *

November 17, 1936, and your attention is directed to the fact that it was agreed "that the final disposition of these cases should be left to the Chief Surgeon instead of the local medical examiner." This statement had reference to employes who were disqualified for service and it was for the purpose of leaving the final disqualification up to the chief surgeon. At this time there was no protest concerning re-examination, and it was generally understood that employes of our shops were subject to the same employment regulations as other employes.

4. The requiring of physical re-examinations under the employment rules is the same for all classes of employes, and there is no justification or support for a position that would establish mechanical department employes on a different basis than other employes for the purpose of these rules.

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.

These findings apply to the following dockets:

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513	532	538
523	533	539
527	534	555
		556

The question here is over the claimed right of the carrier to require physical examinations after employment.

There is no provision in this agreement providing for re-examination of these employes. Moreover, there is nothing in the record or in the history of the controversy between the employes and the carrier on this question that would indicate that the employes were ever willing that such a practice be adopted.

Though it has been held in general that physical examinations may not be required of these employes, there must be some limit to the contention that the carrier cannot require such examinations under any circumstances. It would not be reasonable to contend that there are no circumstances in which it may not be required.

A change in the employe's condition of such a nature as to be obvious and likely to subject not only such employe but fellow employes to much hazard, would give the carrier the right to investigate to determine if his condition is such as actually to be hazardous. It does not embrace the right to examine for mere inroads of age.

Where a serious accident has occurred, or a serious illness experienced, such as to make it apparent to anyone that the man's condition has so changed as to make it probable that his retention or resumption of work would constitute a serious hazard, it is but reasonable to assume that the carrier has the right to protect itself and fellow employes.

This does not give the right to the carrier to insist on an examination before returning to service of a furloughed employe or an employe on leave of absence without some other reason as stated in this opinion.

The carrier was not justified in requiring physical examination in this case.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1941.