

Award No. 545

Docket No. 531

2-Erie-MA-'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 EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Rule 17 (c) and (f) of the General Rules of the Shop Crafts' Agreement on the Erie Railroad Company and Award No. 368, Docket No. 350 of the National Railroad Adjustment Board, Second Division, was violated by the Erie Railroad Company when Ferdinando Pacifici, furloughed machinist helper, was compelled to submit to a physical examination before being allowed to assume duties as a machinist helper at Hornell, N. Y. roundhouse, and that his name be placed on the machinist helpers' roster with the date of October 16, 1939, at Hornell, and that he be compensated for all time lost due to being held out of service on account of this compulsory physical examination.

EMPLOYEES' STATEMENT OF FACTS: On October 16, 1939, Ferdinando Pacifici, furloughed machinist helper at Susquehanna, Pa., was called to Hornell, N. Y. to fill a vacancy as a machinist helper in the roundhouse. He was compelled to submit to a physical examination, which he failed to pass at that time according to the local supervision.

POSITION OF EMPLOYEES: Rule 17, paragraphs (c) and (f) of the rules and rates of pay for mechanical department employees reads as follows:

"(c) When forces are restored senior employees, 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 re-established prior to any additional increase in force."

"(f) When reducing forces, if additional employees are needed at any other point, employees laid off will be given preference and be permitted to transfer to the nearest point with the privilege of returning to home station when force is increased, such transfer to be made without expense to the Company, seniority to govern."

The above quoted paragraphs of Rule 17 were violated by the management of the Erie Railroad Company as there are no requirements in either paragraph that an employe must take physical examination when returning to work after furlough; neither is there any rule in the shop crafts' agreement which provides for compulsory physical examination among the mechanical department employes.

tion of the Second Division, we are submitting Exhibit C, a statement outlining the historical data in connection with such physical re-examinations, which exhibit is hereby made part of this submission.

As indicated by Exhibit A, Ferdinando Pacifici was physically examined at Susquehanna, Pa. on December 14, 1934 when he resumed duty after having been laid off account of reduction in force on May 15, 1931, and there were no protests.

In support of statements that have been made by the railroad that physical re-examinations by the chief surgeon have been recognized and accepted, there is submitted Exhibit B a report signed by Mr. John A. Marvin, secretary-treasurer of the General Chairmen's Association, who met with chief surgeon, Doctor J. F. Dinnen, in his office at Cleveland, Ohio on November 17, 1936. The question of physical re-examination and the question of having men report to Cleveland for examination was discussed, and it was the opinion of all present that "the final disposition of these cases should be left to the Chief Surgeon instead of the local medical examiner."

We feel that the claim of Ferdinando Pacifici, as progressed to the Second Division, is unjustified and not supported by the rules, and, therefore, should be declined for the following reasons:

1. Ferdinando Pacifici held no seniority rights as a machinist helper at Hornell, New York; therefore, any reference to Rule 17 (c), which is cited by the organization in support of this claim, is irrelevant.
2. Rule 17 (f), cited by the organization, is applicable only "when reducing forces," and is not applicable in this case.
3. Award No. 368, Docket No. 350, Second Division, National Railroad Adjustment Board, which is also cited by the General Chairman, is irrelevant as covered in Exhibit C.
4. The employe involved in this case was examined in accord with "Rules Governing the Determination of Physical and Educational Qualifications of Employes," which rules have been in effect for many years.
5. The hernia found by local doctor in his examination at Hornell, which disqualified Pacifici as a machinist helper at Hornell, was the same condition for which Pacifici had been negotiating with the claim agent and the chief surgeon for the purpose of correcting it, as was eventually accomplished by operation at Cleveland, Ohio, on April 23, 1940.

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:

499	531	537
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.

Pacifici was qualified for work by the chief surgeon on October 30, 1939.

Pacifici should be paid for the time lost.

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.