

Award No. 546

Docket No. 532

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), General Rules of the Shop Crafts' Agreement, known as Rules and Rates of Pay for Mechanical Department Employees, and Award No. 368, Docket No. 350, of the National Railroad Adjustment Board, Second Division, were violated by the Erie Railroad Company, when following machinist helpers were compelled to submit to physical examinations before they were allowed to go to work as machinist helpers in the roundhouse at Hornell, New York:

Fred DeVoe
Roy Harvey
George Gall

Frank Catalino
Joseph Gerber
Frank Knight

Therefore, the employees ask that they be compensated for all time lost due to compulsory physical examinations.

EMPLOYEES' STATEMENT OF FACTS: During the months of September, October and November, Fred DeVoe, Roy Harvey, George Ball, Frank Catalino, Joseph Gerber and Frank Knight, furloughed machinist helpers from Susquehanna, Penna., reported to Hornell, N. Y. to fill machinist helpers' vacancies in the roundhouse. Before they were allowed to go to work, they had to submit to a physical examination by the company's doctors.

POSITION OF EMPLOYEES: That Rule 17 (c) and (f), quoted above and which read 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."

determine whether or not something could be done for Harvey to correct the defective vision in order that he could return to work. On being advised by Dr. Dinnen that he would be agreeable to giving this man an examination at Cleveland, General Chairman Valvano made arrangements direct with Harvey to have him come to Cleveland and he reported on June 14, 1930. Dr. Dinnen sent Harvey to an eye specialist at Cleveland and after the report of this examination was received, Dr. Dinnen again arranged through General Chairman Valvano to have Harvey send his glasses to Cleveland in order that the lenses might be changed. On June 26, 1930 the chief surgeon qualified Harvey for work.

As indicated by Exhibit E, Machinist Helper G. A. Gall was examined at Susquehanna on March 14, 1934, in connection with his employment as a laborer after having been furloughed as a machinist helper on January 15, 1932. He was again examined at Susquehanna on July 2, 1937, when he resumed work as a machinist helper, after having been laid off account reduction in force on August 14, 1936. Machinist Helper Gall made no protest in connection with these examinations and there were no protests progressed by the organization.

As indicated by Exhibit F, Machinist Helper Frank Catalino was examined at Susquehanna on February 2, 1934, in connection with his return to work as a laborer at Susquehanna after having been laid off account reduction in force on June 2, 1931. He was also examined at Susquehanna on December 10, 1938. Machinist Helper Catalino made no protest in connection with these examinations, nor were there any protests filed by the organization.

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 Dr. 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 claims in favor of Fred DeVoe, Roy Harvey, George Gall, Frank Catalino, Joseph Gerber and Frank Knight, as progressed to the Second Division, are unjustified and not supported by the rules, and therefore should be declined for the following reasons:

1. As outlined on Exhibits A, D, E, F, G and H, Machinist Helpers DeVoe, Harvey, Gall, Catalino, Gerber and Knight held no seniority rights as machinist helpers at Hornell, N. Y.; therefore, any reference to Rule 17 (c), which is cited by the general chairman in support of the claims, is irrelevant.

2. Rule 17 (f) has no application in these cases.

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 six machinist helpers involved in this case were examined in accord with "Rules Governing the Determination of Physical and Educational Qualifications of Employees," which rules have been in effect for many years.

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 employee's condition of such a nature as to be obvious and likely to subject not only such employee 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 the employes to submit to examinations in these cases.

The record in these cases shows that the employes lost no time from work in the taking of the examinations.

AWARD

Claims in respect to physical examinations 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.