Award No. 721

Docket No. 683

2-NYC-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That ordering of J. Novotny, S. Zegarac and W. Greshko to submit to a physical re-examination on March 14 and 16, 1939, was a violation of Rule 46 of the present working agreement between the New York Central Railroad Company and the New York Central System Federation No. 103.

JOINT STATEMENT OF FACTS: On March 8, 1939, a list of names covering inspectors and repairers and others, was received from the general car foreman, advising they were due for periodic physical examination during March. Among this list appeared the names of J. Novotny, S. Zegarac and W. Greshko, classed as inspectors and repairers, and were requested by their foreman to report to the company surgeon on March 14 and 16 for this examination, which they did under protest to their committee, claiming violation of Rule 46, under rules and working conditions of System Federation No. 103.

POSITION OF EMPLOYES: The employes contend that the management violated Rule 46 of the current working agreement between the New York Central Railroad and System Federation No. 103, Railway Employes' Department, A. F. of L., by ordering J. Novotny, S. Zegarac and W. Greshko to submit to a periodical physical re-examination on March 14 and 16, 1939. These periodical physical re-examinations are ordered at the option of the management at various intervals, in violation of the rules and against the wishes of the employes involved.

Rule 46 reads as follows:

> "Applicants for employment may be required to take physical examination at the expense of the carrier to determine the fitness of the applicant to reasonably perform the service required in his craft or class. They will also be required to make a statement showing address of relatives, necessary four (4) years' experience, and name and local address of last employer."

We contend there is nothing in Rule 46 that requires an employe to submit to periodical physical re-examination after the employe entered the service of the company, and no other rule of the current agreement provides for such periodical physical re-examination; therefore, we claim the present practice should be discontinued.

not with the carmen's committee alone. At those conferences the discussions were general and all members of the federated committee expressed their views as to the general situation. Furthermore, the claim is presented under Rule 46, which is a general rule, applicable to all crafts.

The record herein demonstrates that management has consistently held that Rule 46 does not proscribe the examinations we are requiring car inspectors to undergo periodically. In Exhibit A we stated—

> "* * * Some members of your Committee seem to have the impression that such examinations were forbidden by Rule 46, and also that the Rules require payment for the time consumed in taking the examinations. An examination of Rule 46 shows that it applies only to applicants for employment; consequently, it has no bearing upon these examinations. * * *"

In Exhibit B we stated—

> "* * * Mr. Walber pointed out to the committee that Rule 46 only covers applicants for employment and was not involved in this case. He explained that, as a result of criticism from time to time by the Interstate Commerce Commission, the railroads were forced to take cognizance of the ARA rules; that, however, we did not go as far as the ARA Medical Committee regulations or as far as some of the other railroads had gone. He also explained to the committee that the management had discussed these regulations with Mr. Jewell at a meeting in 1926 or 1927, at which time the management explained what it was doing, and also furnished the committee with copies of the regulations. * * *"

Nevertheless, management has manifested its willingness, in consideration of the sporadic contentions of the employes, to negotiate a formal understanding in respect of this matter. If your Board should conclude that management's interpretation of Rule 46 is wrong, and sustain the employes' contentions, we think that the Board should thereupon give consideration, before making its Findings and Award, to the following pertinent matters:

a. Is the Board disposed to substitute its judgment for that of the company's doctors and officials and hold that all periodic examinations should cease forthwith?

b. Is the Board disposed to substitute its judgment for that of the Interstate Commerce Commission, Bureau of Safety, and hold that such examinations should not be made?

c. Is the Board disposed to assume such responsibilities as may ensue if and when car inspectors (or others mentioned in this dispute) are no longer required to pass physical examinations periodically, due to the Board's conclusions?

A question collateral with c. above should also be included in the record: Is the Railway Employes' Department, A. F. of L., sponsor of this claim, willing to assume its fair share of such ensuing responsibilities?

In consideration of the status which has existed with respect to periodic physical examinations on the New York Central for a period of fifteen years, of the undoubted value of physical examinations to the employes themselves, and of the importance and necessity of such examinations in the interest of safety, management urges that the instant claim be denied, no violation of Rule 46 having been shown.

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.

There is no dispute in the facts in this case, it being submitted to this Board on a joint statement.

That on March 8, 1939, a list of names covering inspectors and repairers and others was received from the general car foreman advising they were due for periodic physical examination during March. Among this list appeared the names set forth in the claim of the employes. They were classed as inspectors and repairers. They took the examination under protest, claiming violation of Rule 46.

This Board has consistently held that the carrier does not have the right to generally or arbitrarily require physical re-examination of this type of employes. However, where circumstances have arisen which make it evident to the carrier that a man's condition has decidedly changed from that at the time of his entrance into the service and in such a way as to probably make him a hazard, it is but reasonable that the carrier should in such cases be entitled to re-examination before being required to assume the risk of his reinstatement. In this record there is no showing or even claim made that any of these employes were disabled, physically or in any other way, so that they were not capable of performing their work.

Carrier maintains that it has been a long established practice to take a periodic physical examination upon this railroad. However, the record shows that there has been a dispute and controversy between the parties and it can hardly be held that where a practice is in continuous dispute and controversy that it is an established one.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.