

Award No. 953

Docket No. 871

2-GN-BM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (a) That between July 1, 1939 and September 22, 1941, the carrier unjustly held Boilermaker Helper Antonio Rizzuto out of service.
- (b) That Boilermaker Helper Antonio Rizzuto be compensated for all time lost in consideration of having been held out of service unjustifiably.

EMPLOYEES' STATEMENT OF FACTS: At Spokane, Washington, the carrier employed Antonio Rizzuto as a boilermaker helper with a seniority date on the boilermaker helpers' seniority roster as of November 22, 1922.

Boilermaker Helper Antonio Rizzuto, due to his physical condition, by permission, laid off for rest and treatment during the period of February 1 to July 1, 1939.

The claimant was determined to be in good physical condition and thereupon he reported for duty on July 1, 1939. He was not permitted to return to work as a boilermaker helper. This claimant complied with the instructions to submit himself to physical examinations in conflict with the agreement rules to prove and did prove his physical fitness to resume and perform his regular work.

From July 1, 1939, to September 22, 1941, the claimant was held out of service as a boilermaker helper. However, he was employed as a section laborer between Spokane and Hillyard during the period from July 1, 1940, until in the second half of January, 1941, when he was laid off.

The claimant was informed by the carrier that he may report for work at 7:00 A. M., September 22, 1941, in his former position as boilermaker helper and he did.

POSITION OF EMPLOYEES: Antonio Rizzuto was out of service of the Great Northern Railway Company, Hillyard shops, Spokane, Washington, from February 1, 1939, up to July 1, 1939, suffering from a nervous breakdown which, it is claimed was the result of persecution by local officials of the company because of his union activities and the handling of grievances for his fellow workers. On being pronounced physically fit by his physician

In a letter to this representative of the carrier, dated December 30, 1939, claimant said in part: "In taking my case up with the Local Committee representing the Boilermakers at Hillyard, after three weeks they informed me that they could not do anything about it, as I am not a member of the Shop Craft employes." And yet, in Exhibit C-15, dated September 2, 1941, statement is credited to the Local that they "have been fighting for two years to have him returned to work." With such diversity of charges, the carrier's request of the representative organization for its approval of claimant's return to service would seem to be almost essential before taking any action. It was at the Local's request the man had been taken out of service; the man himself reported that they would not do anything to help him get back; and yet a claim is now presented for something over a year's time during which the organization allegedly was "fighting to have him returned to work," but would not reply to the carrier's proposal to do that very thing.

In general, it would appear that claimant talked about his alleged grievances to everybody who would listen to him, and that such grievances involved loss of seniority, which was never in question; securing of free transportation while employed elsewhere; failure to get as much overtime as he wanted; and similar matters. In fact, the carrier's very voluminous file would seem to indicate that the man felt himself badly imposed upon by everybody, and that his dementia was to a considerable degree a delusion of persecution. The carrier has refrained from submitting all this extraneous matter to the Board and confined itself to those details pertinent to the claim as here submitted, and which it believes shows the following: (1) A mental state causing alarm to fellow employes, supervisors and doctors; (2) a leave of absence pending recovery; (3) a proposal by the carrier to put him back to work under observation after some fourteen months; (4) inability to secure any response to such proposal for some fifteen months thereafter. Under such facts, the carrier is unable to see any reason whatever for a claim before this Board that the carrier is responsible for unjustly holding claimant out of service. That the carrier, at the request of fellow employes, justifiably took Rizzuto out of service is acknowledged; that such disqualification was justifiably continued for fourteen months it believes is proven; but thereafter, the carrier assumes no liability or responsibility for anything further. Certainly a subsequent exhibition of violence involving other employes after May 20, 1940, would have left the carrier in most unenviable position if the complaining fellow workers and their representative organization had not agreed to claimant's return to work.

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.

The evidence of record supports the following conclusions: that Boilermaker Helper Antonio Rizzuto was properly held out of service on account of illness on February 1, 1939; that when he sought to return to service on July 1, 1939 the carrier properly subjected him to physical examination; that the unfavorable report on the physical examination of July 3, 1939 did not constitute an independent determination of his then physical condition; that he was arbitrarily held out of service at that time; that he was improperly denied further opportunities to prove his physical fitness; that he was improperly denied the right to an investigation as to the reasons for his being continued out of service; that the failure of the organization to reply to the carrier's offer of

May 20, 1940 to return the claimant to service on a trial basis did not relieve the carrier of the obligation to return him to service at that time if he was in fact fit to resume work; that no adequate grounds have been adduced for the assumption of his unfitness subsequent to July 1, 1939; that between that date and September 22, 1941, when he was restored to service, he was unjustly deprived of his job, as alleged; and that he is equitably entitled to be paid for this unjust treatment a sum measured by the compensation he would have received from the carrier as boilermaker helper during this period, less such amounts as he actually earned in other employment during the same period.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1943.