

Award No. 977

Docket No. 906

2-SAL-MA-'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. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**SEABOARD AIR LINE RAILWAY
(L. R. Powell, Jr. and Henry W. Anderson Receivers)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier did and is violating the controlling agreement at Howells, Georgia
 - (a) Terminating the service of Pump Repairer G. N. Gentry on November 15, 1942.
 - (b) Depriving Pump Repairer G. N. Gentry of his contractual right to remain on his said job since November 15, 1942.
2. That the carrier be ordered to—
 - (a) Restore to service Pump Repairer G. N. Gentry at Howells, Georgia, with his seniority rights unimpaired.
 - (b) Compensate Pump Repairer G. N. Gentry for all wage losses suffered retroactive to November 15, 1942.
 - (c) Cease and desist from requiring Pump Repairer G. N. Gentry to submit himself to physical examinations.

EMPLOYEES' STATEMENT OF FACTS: Pump Repairer G. N. Gentry entered the service of the carrier on August 1, 1926, pursuant to having passed the carrier's medical department physical examination and he has since continuously remained in the service as assistant pump repairer, roadway machinist, then pump repairer, and from December 1, 1941 to November 15, 1942 as pump repairer at Howells, on the Georgia division.

Pump Repairer Gentry received instructions to and did submit himself to further physical examinations in 1933, 1935, 1937, 1939, 1941 and again on October 29, 1942.

On November 15, 1942, Pump Repairer Gentry was notified by Mr. J. H. Gill, division engineer, that it would be necessary to remove him from service unless he signed a paper releasing the company from the payment to him or to his lawful heirs any claims that may result from accidents in which he may be involved during his employment with the carrier. Mr. Gentry declined

In view of this interpretation and understanding of the agreement of March 10, 1941 creating a system roadway shop, Mr. Gentry being removed from the position of pump repairer for the reason stated, had the right to request employment in accordance with his seniority as of April 1, 1941 in the system roadway shop at Hamlet. While this offer was made by the company, there is no reason why the committee should not have made a similar request to protect Mr. Gentry from any loss.

The carrier contends it was justified in its actions, that your Board has held in cases as above cited that examination under certain conditions is proper, and, therefore, requests that your Board deny the claim.

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 waived right of appearance at hearing thereon.

The evidence of record supports the following conclusions: that Rule 33 of the agreement, dealing with investigations incident to disciplinary action on the part of the carrier, is not applicable to the circumstances of this proceeding; that in ordering the physical examination involved in this case the carrier acted reasonably and in good faith, because of the demands of safety, and did not violate the agreement; that the claimant's right to reinstatement, with seniority unimpaired and compensation for time lost, depends upon his physical fitness to perform the duties of pump repairer without undue hazard; that the report of the company doctor and that of the claimant's doctor differ materially in their findings; and that the proposal of the carrier, under date of March 30, 1943, that a neutral or independent doctor participate in a re-examination of the claimant, "the findings of the three doctors to be final," provides a fair and reasonable basis for adjusting the dispute.

AWARD

Claim remanded for settlement by the parties pursuant to above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.