

**Award No. 1038**

**Docket No. 960**

**2-GN-FT-'44**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That prior to June 29, 1942, at Kelly Lake, Minnesota, the carrier violated the controlling agreement and Rule 1 thereof by:

- (a) Requiring machinists and helpers to submit to periodical physical re-examinations.
- (b) Arbitrarily ordering Machinist G. Y. Larson to take a physical re-examination.
- (c) Threatening Machinist G. Y. Larson with discharge or suspension for declining to submit to a physical re-examination.

2. That in consideration of the aforesaid, the carrier be ordered to cease and desist from:

- (a) Requiring machinists and helpers to submit to physical re-examinations.
- (b) Arbitrarily requiring Machinist G. Y. Larson to take a physical re-examination.
- (c) Threatening Machinist G. Y. Larson and others with discharge or suspension for declining to submit to physical re-examinations.

**EMPLOYEES' STATEMENT OF FACTS:** The carrier maintains at Kelly Lake, Minnesota, a force of approximately fifteen machinists and twenty machinist helpers, including the claimant, Machinist G. Y. Larson.

The claimant's seniority date is May 27, 1936, and before entering the service he passed the carrier's physical examination.

The claimant is chairman of the machinists' local committee and his regular hours of employment are from 7:00 A. M. to 3:00 P. M. and his regular assigned job is on general locomotive repair work.

At about 2:00 P. M. on June 28, 1942, the claimant was ordered by Foreman A. R. Coder to report to the Doctor Adams Clinic for a physical

found physically fit and returned to work. In other words, he makes no complaint as to any unfair treatment but simply protests against being required to comply with a condition of employment established and in effect for years before he entered the service of the carrier. The statement that he was threatened with discharge or suspension if he declined to submit to such re-examination is substantially correct, since it follows, without doubt, that the carrier cannot maintain discipline if employees are permitted to disregard at will the rules and regulations governing their employment. That there was no lack of knowledge on the part of Mr. Larson in connection with the policy of the carrier pertaining to physical examinations is evidenced by the following fact, taken from his employment record:

"Employed as Helper-Apprentice—12/10/30—examined physically—12/9/30.

"Reemployed as Machinist 5/27/36 after being out of service 9 months and re-examined same date.

"Reemployed as Machinist 4/5/37 after being out of service 5 months. Re-examined same date.

"Reemployed as Machinist 5/28/38 after being out of service 6 months. Re-examined same date.

"Called for and given regular 4 year periodical examination 6/29/42 to which exception is now taken."

That there was no discrimination shown in calling Mr. Larson for this re-examination simply because he was the representative of the machinists at Kelly Lake is evidenced by the fact that all other machinists at that point hired subsequent to May 1, 1926, and who had been in service over four years had also been re-examined. These men, their seniority dates and date of last re-examination are as follows:

	<b>Seniority Date</b>	<b>Date Last Examined</b>
Gaugler, Ralph	6-19-33	6-18-41
Karl, Leonard	7- 2-33	4- 3-39*
Johnson, Wilbur	7-27-33	6-18-41
Peterson, Roy	6-16-37	6- 2-41

\*Re-examined 4-29-43.

It would, therefore, seem that the position of the employees in asking your Board to take the position that the carrier has no right to re-examine its employees are taking an attitude which is not only unreasonable from a standpoint that they can not show wherein it has been used to the detriment of the employees, but also are attempting, with the assistance of your Board, to take away from such employees something which is of great benefit to them.

Summing up, it is the position of the carrier that periodical re-examinations are in no wise prohibited by any rule in the existing contract covering wages and working conditions for machinists; that it is the right of the carrier to include as a condition of employment a requirement that such physical re-examinations shall be taken; that the employees have not made any claim that such physical re-examinations have been used for any purpose other than one beneficial to the employee and that any misuse of this requirement by the carrier is amply protected against by existing contract rules. The carrier feels, therefore, that your Board can not do other than sustain the position of the carrier in this case, both from a standpoint of equity and common sense.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute relates to the right of the carrier to require periodical physical examinations of employees. The dispute has a background in the industry, and also in the negotiations between the present parties leading up to the current agreement, effective January 1, 1942.

Rule 46 of the old National Agreement provided: "Applicants for employment will be required to make statement only as to their ability and address of relatives, except when their duties require them to distinguish signals or do flagging, when they shall be required to pass the usual eyesight and hearing tests." Construing this rule the United States Railroad Labor Board held, in effect, in its decision No. 1362, that the rule prohibited all physical examinations except those specifically mentioned therein. This Division has followed Decision 1362 and given like effect to rules similar to Rule 46 of the National Agreement.

It appears from the record that since 1926 this carrier has required its employees to take periodical physical examination. This practice was the subject of discussion at the time the 1942 agreement was being negotiated. The employees in the negotiations proposed a rule identical to old Rule 46 of the National Agreement. The carrier refused to incorporate such rule in the agreement and insisted upon its right to require the physical examinations.

The carrier has had in effect for years a form of application for employment. Under paragraph 20 of this application, the applicant agrees to submit to periodical physical examinations that may be required. Rule 1 of the 1942 agreement as finally negotiated provides: "Applicants for employment will be required to fill out the company's standard form of application and pass required physical and visual examination." Obviously, this rule is materially different than old Rule 46. Viewed in the light of the negotiations we can come to no conclusion other than that Rule 1 specifically requires that all applicants will be required to pass the required physical examination, and that such rule contemplates, by the provision requiring the signing of the standard form of application, that after employment the employees must submit to such physical examinations as may be required as provided in paragraph 20 of the application.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1944.