

Award No. 1074

Docket No. 994

2-CRI&P-CM-'45

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement the inspection and repair of cars is the work of carmen regularly employed as such.

2. That the carrier violated the controlling agreement when Carman W. E. Lackey was not assigned to the vacancy bulletined for a car inspector and repairman on December 7, 1943, instead of Shop Laborer M. C. Eddington, who was assigned to said vacancy on or about December 9, 1943.

3. That the carrier be ordered to recognize the seniority rights of Carman W. E. Lackey and assign him to the aforesaid vacancy improperly filled on and since December 9, 1943.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains at Haileyville, Oklahoma, three shifts of carmen. Thereat, the claimant, W. E. Lackey, entered the service as a carman on December 4, 1926 and he is the sixth senior man on the carmen's seniority roster at this point.

A vacancy occurred for a car inspector in the train yard on the 12:00 midnight to 8:00 A. M. shift which was bulletined on December 7, 1943, as per copy of bulletin submitted as Exhibit A.

The claimant made application for this vacancy to the master mechanic, with copy to his local chairman, as per application submitted as Exhibit B, and was the only applicant therefor.

After it was known that Carman Lackey would be an applicant for the vacancy, the bulletin of December 7, was cancelled on December 9, 1943, as per copy of bulletin submitted as Exhibit C, and Shop Laborer M. C. Eddington, regularly employed as such for several years, was assigned as a carman to fill the vacancy on the 12:00 midnight to 8:00 A. M. shift, the same vacancy that was bulletined on December 7, and cancelled on December 9.

sumption on duty would constitute a serious hazard, it is but reasonable to assume that the carrier has the right to protect itself and fellow employes."

Mr. Lackey's condition did change, when he lost the sight of his left eye, and the placing of him on a car inspector's position now would constitute a serious hazard.

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 question before us in this dispute is whether a carman although he may have only one eye should have been assigned as car inspector. Claimant, while in the employ of the carrier, suffered an injury which resulted in the loss of vision in his left eye. A settlement was made with him by the company. He made application for a vacancy in 1943 as car inspector. Because of the fact that he had lost the sight of his eye he was not permitted to take the vacancy, but the carrier did offer him a position as car repairer. It was evident that claimant could not pass the eye sight and hearing test required by the second paragraph of rule 36 of the current agreement. To have given him a trial, in view of the fact that it was known that he could not qualify under the rule, would have been a useless thing. There was no violation of the agreement, see Award 483.

The employes cited Award No. 791 of this Division, that award is not in point as the basis of that award is a rule set out in same, which is not in the current agreement under consideration. Nothing herein is to be considered as passing upon the question of the qualifications of shop laborers to hold the position involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 15th day of May, 1945.