

Award No. 1302

Docket No. 1220

2-A&WP-W. Ry.-Ala.-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 126, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

**ATLANTA AND WEST POINT RAILROAD COMPANY—
THE WESTERN RAILWAY OF ALABAMA**

DISPUTE: CLAIM OF EMPLOYEES: That the termination of the service rights of Machinist J. W. Robertson, beginning on January 7, 1948, was not authorized by the terms of the current agreement, and that accordingly the carrier be ordered to restore this employe to all service rights with pay for all time lost since January 6, 1948.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. W. Robertson (hereinafter referred to as the claimant) entered the service of the carrier at Montgomery, Alabama, on July 12, 1922, and was awarded a service emblem (or pin) in recognition of twenty-five years of continuous service October 28, 1947, the date on which he sustained a personal injury when accidentally coming in contact with emery wheel centrally located in machine shop.

On and prior to October 28, 1947, the claimant held a work assignment on valve gear job located at one end of machine shop, opposite tool room at other end, to which he often commuted in obtaining and returning tools used in connection with his work.

The claimant had gone to the tool room on the afternoon of October 28, 1947, to turn in a boiler tap. He was returning to the valve job when, recalling the need of a drill, suddenly turned around to thus bring his left wrist in contact with the above identified emery wheel, severing tendons just below joint. First aid was given and claimant later carried to the office of Dr. J. A. Martin by his wife.

Dr. Martin (company surgeon) dismissed the claimant on December 26, 1947, since he had then recovered complete and normal use of his left hand. He reported to the office of Mr. A. E. Edwards, master mechanic, January 3, 1948 to advise that he wished to remain off-duty for personal reasons until January 7, 1948. The claimant was then informed by Mr. C. B. Dinkins, chief clerk, that he could not resume work until examined and certified for service by Dr. Penton.

Mr. Dinkins substantiated that advice he gave the claimant by showing him a letter the master mechanic had received from Dr. Garner at Atlanta,

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.

It is not clearly proved that Robertson's injury on October 28, 1947, resulted from, or was attributable to, a physical impairment. For that matter, there is no conclusive showing of substantial deterioration or drastic change in Robertson's physical condition prior to the date of his injury. In any event, his wound was healed, the doctor discharged him as a fully recovered patient, and he reported back to work.

Under these circumstances, it is difficult to rationalize the carrier's demand that he submit to a physical examination before resuming his job duties. Nevertheless, Dr. Penton's findings, after examining Robertson, did not disclose the existence of any ailment or disability likely to jeopardize Robertson's satisfactory job performance. The doctor's conclusion that Robertson was subject to dizziness is not supported by, and is, in fact, in direct conflict with the doctor's own observations.

It is concluded, therefore, that Machinist J. W. Robertson was unjustly deprived of reinstatement beginning January 7, 1948, and he should be reinstated with seniority rights unimpaired, and remunerated for all time lost as a result of the carrier's action, with deductions for wages, if any, earned in any other employment during the period for which he is awarded back pay.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.