

Award No. 1602
Docket No. 1564
2-SAL-CM-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1). That under the current agreement Carman J. T. Hardee's service rights were unjustly terminated as of November 5, 1951.

(2). That accordingly the Carrier be ordered to reinstate this employee with seniority rights unimpaired and remunerate him for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carman J. T. Hardee, herein-after referred to as the claimant, was regularly employed by the carrier as a car inspector at Wildwood, Florida, and his dating on the carmen's seniority roster maintained by the carrier at the point is December 3, 1948.

The claimant sustained personal injuries in the performance of his regular assigned duties of inspecting cars on January 6, 1950. His regular assignment of hours were from 7:00 A.M. to 3:00 P.M. His regular assigned working days were Friday through Tuesday five days per week including holidays that fell within the five day assignment. His rest days were Wednesday and Thursday.

The claimant's injuries, however, were of such nature that he could not be and was not released for returning to his regular job as a car inspector until November 2, 1951. Thus, the claimant with his doctor's release for duty, were presented to the car foreman by the local chairman for returning to duty on Monday, November 5, 1951, with the result that this officer then, and other carrier officers in succession of appeals, have declined to return this claimant to service.

The agreement effective March 10, 1923, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted there is no dispute between the parties in respect to the claimant having sustained personal injuries in the performance of his regular assigned duties of inspecting cars on January 6, 1950; that the claimant was approved by a competent doctor for returning to his regular job of inspecting cars and that he so reported for such work on November 5, 1951; and that the Carrier would not then, or since, permit the claimant to return to work when he was able to do so. It is

The claimant in this case deliberately elected to pursue his case through the courts claiming permanent disability. Having so elected he, as well as the carrier, must be bound by the findings of the jury. A sustaining award by the Second Division in this case would be tantamount to saying that the carrier must employ the services of the claimant as a carman when it has been claimed before the courts that he was permanently disabled to perform the duties of a carman and a decision of the court has been rendered in his favor on the basis of this complaint and the carrier has paid for that disability.

There has been no violation of the working agreement by removing Claimant Hardee from the carmen's seniority roster as he in fact removed himself therefrom when he elected to file suit on the basis of permanent disability and was awarded damages on that basis; therefore, the carrier respectfully requests that the Second Division issue a denial of this claim.

As hereinafter stated, the meager handling of this claim on the property prevents the carrier from being fully aware of claimant's position in this case; therefore, it reserves the right to answer any and all allegations contained in the claimant's submission to this Board. All that is contained in this submission has not been discussed or handled with the claimant or his representative; however, the same should be well known to them.

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.

Both the Railway Labor Act, and the established procedure on the property require that cases be conferred upon by the parties before they will be cognizable by this Board. This means a sincere effort be made to solve the dispute—not a mere perfunctory conversation or reference to it. No such conference was held in this case; it is therefore here prematurely.

AWARD

Case remanded for conference between the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1952.