

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

ROBERT L. MOCK, MACHINIST—Individual

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Petitioner believes that this dispute involves five questions upon which an award is desired:

1. Whether or not petitioner's attorneys should have been allowed to be present and to represent petitioner in the hearing ordered by the Second Division of the National Railroad Adjustment Board in Award No. 1711, such cause having been heretofore submitted under No. MC-1405-75?

Without waiving his rights to have his attorneys present in such hearing aforesaid, and only in the event the Board rules that petitioner not be allowed to have his attorneys present, the following further questions are involved:

2. Whether or not the railroad unjustly suspended or dismissed petitioner from their service by failing to assign him any work from April 29, 1949, until the date hereof, thereby violating Rule 17(a) of the agreement between the International-Great Northern Railroad Company and San Antonio, Uvalde, and Gulf Railroad Company, with the System Federation No. 14, Railway Employees Department of A. F. of L., Mechanical Section thereof, effective September 16, 1941, providing as follows:

"If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated, with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."?

3. In the alternative, whether or not Rule 27 of the agreement aforesaid providing as follows:

"Employees who have given long and faithful service in the employ of the Company and who have become unable to handle heavy work to advantage will be given preference of such light work as they are able to handle."

has been breached by the railroad in failing to assign petitioner any work?

4. In the event that either question 2 or question 3 is answered "yes," whether or not the petitioner is entitled to his wages at the prevailing wage rate from April 29, 1949, to the date hereof, and, as a corollary to such question, whether or not he is entitled to a reasonable amount of overtime wages for such period of time?

2. Your Board in Award 1711 answered in the negative the issue as to whether petitioner has been unjustly suspended or dismissed from service. This disposes of paragraph 2 of questions in dispute.

3. Your Board in Award 1711, and the carrier hereinabove and by Exhibit No. 2, have furnished the information justifying and requiring a negative answer to the question as to whether Rule 27 has been breached by the carrier. This disposes of paragraph 3 of the questions in dispute.

4. Since the answer to paragraphs 2 and 3 of the questions in dispute is "No", the answer to paragraphs 4 and 5 thereof involving payment of wages and reinstatement is, of course, "No".

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.

The parties to said dispute waived right of appearance at hearing thereon.

Pursuant to Award No. 1711 of the Second Division of the National Railroad Adjustment Board, a hearing was afforded the claimant on November 20, 1953 at San Antonio, Texas—present at the opening of the hearing were the claimant and his attorney, Mr. W. C. Wolff, Jr., Mr. C. J. Lieck, Jr., the duly authorized local committee, the general chairman, the carrier's representatives and the stenographer clerk who made the stenographic record of the hearing. Immediately the question was raised as to whether the attorneys would be permitted to represent the claimant at the hearing. As it was being held pursuant to Award No. 1711, Second Division, National Railroad Adjustment Board and in compliance with Rules 16 and 17, as well as the Note in connection therewith of the controlling agreement, it was the carrier's position, as well as that of the statutory representatives of the employees that the attorneys representing Mr. Mock could not remain in the hearing, since Rules 16 and 17, and the Note in connection therewith provided for the right of an individual employee to present his own grievance or in a hearing involving a charge against him to present his own case personally and when the individual does so, the duly authorized committee or its accredited representative has the right to be present at all such conferences, hearings or negotiations between the aggrieved or accused employee and the representative of the carrier; it gives the individual the right to personally handle his own case and makes no provision for any other representative than the duly authorized representative of the employees and the carrier to be present.

The parties to the agreement, the statutory representatives of the employees and the carrier are in agreement as to the intent of rules involved—that is that the petitioner's attorneys could not remain at the hearing conducted in accordance with the controlling agreement. Since the parties to the agreement have no dispute over the interpretation of Rules 16, 17 and the Note, we see no need for interpretation.

The hearing record shows that the issue to be determined is whether or not a position existed on or after April 29, 1949, the duties of which the claimant is physically able to perform and to which his seniority would entitle him. Claimant admits he is, or at least has been, afflicted with epilepsy, and the doctors have so found. That is normally a question for doctors to

determine, and carrier's supervisory personnel have a right to rely upon competent medical advice in such matters.

The record of the hearing held on November 20, 1953, does not show that there existed a position the duties of which claimant was physically able to perform and to which he was entitled by the exercise of his seniority rights. Claimant contends otherwise, but was unable to satisfactorily discharge the burden of proof to that effect. This leaves a conflict of evidence based upon the record before us; we are unable to say the carrier erred in reaching that conclusion.

The hearing record shows that carrier made an offer to return the claimant to work if a competent neutral medical examining board shows his physical condition was such that would permit him to work in 1950—this was refused by the claimant—the record discloses this offer is still open. Therefore, we think pay for time lost is without merit and is disallowed.

AWARD

Claim denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.