

Award No. 2473
Docket No. 2271
2-SAJCI-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

SAN ANTONIO JOINT CAR INTERCHANGE ASSOCIATION

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman Charles H. Philips was unjustly dealt with when he was denied the right to return to service on October 31, 1955.

2. That accordingly the Carrier be ordered to restore the aforesaid Carman to service and compensate him for all time lost retroactive to October 31, 1955.

EMPLOYES' STATEMENT OF FACTS: Mr. Charles H. Philips, hereinafter referred to as the claimant, was employed as a car inspector by the San Antonio Joint Car Interchange Association. On June 15, 1955, the claimant was injured in an automobile accident enroute to work. On or about October 25, 1955 examination was made by Dr. J. R. Chandler to determine the fitness of the claimant for returning to work. This examination revealed blindness in the left eye due to a nerve injury. The physical condition of the claimant was otherwise fit.

On October 31, 1955, Mr. D. E. Walker, chairman of the San Antonio Joint Car Interchange Association, notified the claimant that he would not be permitted to return to service in capacity of car inspector.

The general chairman of carmen, Mr. R. A. Moser, was advised of this unjust action and on November 15, 1955 called on the district surgeon of the Missouri Pacific Lines Hospital Association. Dr. Shotts gave the following information in a letter:

"November 15, 1955

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Charles H. Philips has completely recovered from an accident suffered in June, 1955, and is now able to return to work.

As previously stated, it is a fact not subject to dispute that the San Antonio Joint Car Interchange Association has no position which claimant could safely perform with his present physical handicap of vision in only one eye.

The association is not unaware of "Remarks" offered by the examining doctor to the effect that claimant was okay for duty "as trial". Whether or not such remark was intended to have reference to work as a car inspector, it was obviously inconsistent with specific medical findings as to qualifications and was beyond the province of the medical examiner. The ability or lack of it to observe and avoid dangers in unpredictable circumstances such as prevail in a congested railroad switching yard cannot be determined by trial. The possession of complete physical faculties to cope with such situations must be determined before an individual is subjected to them. Claimant Phillips manifestly lacked an essential faculty in having no vision with his left eye.

The association respectfully submits that on the record before the Board in the instant case, the proper findings and award will be of the same effect as those made in its Award 1813 reading as follows:

"We think the evidence is ample to sustain the carrier's action in disqualifying claimant because of physical disability until such disability is removed. He was clearly unable to perform heavy work or climb off the ground at the time of his disqualification, things that a machinist's helper is required to do. It involves no question of discipline and Rule 39, current agreement, is without application.

AWARD

Claim denied.

CONCLUSIONS

For the reasons hereinabove shown, the contention of the organization that claimant was "unjustly dealt with" and its request that carrier "be ordered to restore the aforesaid Carman to service and compensate him for all time lost retroactive to October 31, 1955" are without merit and should in all things be denied.

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 employees 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 the dispute were given due notice of hereing thereon.

Rule 10 of the agreement between the parties provides that should any employe subject to the agreement believe he has been unjustly dealt with he may file a grievance, and if it is not adjusted satisfactorily on the property, it can come to this Board for a decision. The claimant in this case was employed as a car inspector by the San Antonio Joint Car Interchange Association. On June 15, 1955 he was injured in an automobile accident. On November 15, 1955 the doctor who had been attending him issued a statement that he had recovered from the accident but was blind in his left eye due to a nerve injury. The carrier notified the claimant that he would not be permitted to return to service in capacity of car inspector, because of the blindness in his left eye. The claimant believes he was unjustly dealt with and seeks reinstatement to the position he held before the accident.

The carrier does not employ car inspectors who are blind in one eye. The duties of a car inspector require good vision. We find that the carrier has established standards for this job which are not arbitrary or unreasonable. Certain requirements for physical fitness are absolutely necessary. We believe that the requirement for car inspectors to have good vision is not unusual or unreasonable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.