

Award No. 2481

Docket No. 2255

2-PRR-MA-'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. 152 RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement Machinist Apprentice William Talarowski was unjustly removed from his Apprenticeship on May 3, 1954.
2. That accordingly, the Carrier be ordered to reinstate this employe to his Apprenticeship with seniority rights unimpaired and remunerate him for all time lost retroactive to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Machinist Apprentice William Talarowski, hereinafter referred to as the claimant, was employed as a laborer, by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, Wilmington Shops, Wilmington, Delaware, effective January 22, 1952. As a result of an application for apprenticeship training, was selected for a position of apprentice in the machinist craft, effective January 28, 1952.

On April 30, 1954, claimant was notified that due to his physical condition he was being relieved as machinist apprentice with the carrier, effective May 3, 1954, but was being permitted to retain seniority in the laborers class and would be permitted to exercise his seniority when he was able to return to duty in accordance with the existing regulations.

Apprentices are appointed positions by the Master Mechanic and, he being the officer of the carrier who removed the claimant, claim was appealed direct to the superintendent, Maryland Division, denied in writing on August 13, 1954. The local chairman of the machinist craft requested a joint submission on September 4, 1954, which was entered into and signed October 28, 1954, after which the case was turned over to the general chairman for handling with the general manager, the highest officer of the carrier designated to handle grievances.

Under date of November 10, 1954, the general chairman wrote the general manager docketing the case for discussion at the regular scheduled

Your Honorable Board has held, and reasonably so, that it is not the function of the Board, nor is the Board qualified, to substitute its judgment for that of skilled medical men in determining the question of the physical fitness of an individual to work. In this connection the attention of your Honorable Board is directed to the following statement appearing in Third Division Award No. 4816 (Referee Shake):

"On the other hand this Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the physical fitness of an employe to work."

And also Third Division Award No. 5815:

"This Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the fitness of an employe to work."

A final comment should be made with regard to the employes' request that claimant be compensated for all time lost as a result of his disqualification as a machinist apprentice. If the Board should find that the claim has any merit, which the carrier denies, any award of compensation for "monies lost" should take into account any earnings of the claimant in outside employment during any period during which it may be held he was entitled to be in active service as a machinist apprentice with the carrier. Nothing in the applicable agreements displaces the general rule of law, recognized in numerous awards by the National Railroad Adjustment Board, that one claiming violation of a contract must attempt to mitigate the damages suffered.

It is, therefore, respectfully submitted that the claimant was properly disqualified as a machinist apprentice on the recommendation of proper medical authority and that in any event claimant is not entitled to the compensation under the provisions of the applicable agreement.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties and to decide the present dispute in accordance therewith.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of William Talarowski in the instant case.

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 the dispute were given due notice of hearing thereon.

The claimant was employed as a laborer, at the Wilmington Shop of the carrier, January 22, 1952, and appointed machinist apprentice effective January 28, 1952. On April 14, 1952, December 14, 1953 and February 1, 1954 the claimant complained of pains in his back, and on February 4, 1954 he was given an orthopedic examination at Philadelphia, Pennsylvania. On April 30, 1954 he was notified by letter from the carrier that due to his physical condition he was being relieved as machinist apprentice, effective May 3, 1954, but

was being permitted to retain seniority in the laborer's classification and would be permitted to exercise his seniority when he was able to return to duty. He never did complete his apprenticeship program. On June 3, 1955 the carrier wrote to the claimant recalling him to service as a laborer, but he declined the recall.

The carrier removed the claimant from the position of machinist apprentice, when it determined on the basis of competent medical evidence that he was not qualified to hold such position because of physical infirmities. The record clearly justifies the carrier's action. The record does not show that the carrier acted arbitrarily or unfairly. The claimant had not completed his apprenticeship program so had no seniority rights except his rights as a laborer.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 11th day of June, 1957.