

Award No. 2531
Docket No. 2586-I
2-P&LE-LE&E-I-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

FRANK H. TIPLER—Carman

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEE:

A. I suffered injuries to the eyes and head, causing double vision and inability to perform work as heretofore.

EMPLOYEE'S STATEMENT OF FACTS:

"A. I started to work for the P. & L. E. R. R. during 1929.

B. I was injured on the job, October 15, 1952, and was off work for 4 days.

C. I returned to work October 20, 1952, and continued to work until Sept. 29th, 1955. I, Frank H. Tipler, was sent to Dr. McCaslin and underwent treatment for my eyes from February 1, 1955, to May 6, 1955, at which time I was released for work.

D. I returned to work May 26, 1955, and was put to work on a job which was covered with oil, grease, etc. I fell 3 times, striking my head each time. These falls were witnessed by Frank De Vito, 1429 Fleming Ave., Pittock, Pa., and Joseph Handlovich, 831 Frank St., McKees Rocks, Pa.; also reported to Inspector William Kimbler, and Superintendent W. W. Walters on June 16, 1955, July 22, 1955 and August 16, 1955 respectively."

POSITION OF EMPLOYEE: A. Inability to work is due to double vision caused by the above accidents while working from May 25, 1955, to September 29, 1955.

B. Submitted herewith, made part hereof, and identified as Exhibit A, are copies of Dr. Winters examination.

CARRIER'S STATEMENT OF FACTS: Under date of March 7, 1957, Executive Secretary Harry J. Sassaman of the Second Division, National Railroad Adjustment Board, addressed a letter to Director of Personnel R. E. Black of The Pittsburgh & Lake Erie Railroad Company to which was attached the following notice which contains the same information as that received by the carrier's district claim agent, and hereinbefore referred to.

or interpretation of the rates of pay, rules and working conditions agreement governing carmen. However, assuming only for the sake of argument, that the Board had jurisdiction, the case would be improperly before the Board by reason of the fact that it had not been handled in accordance with Section 3, First (i) of the Railway Labor Act in the manner prescribed in Rule 38 of the carmen's agreement.

The carrier respectfully submits that the Board dismiss the case on the basis that the case has not been handled on the property in accordance with the applicable agreement.

2. CLAIMANT HAS NOT BEEN DISCHARGED FROM SERVICE BY CARRIER.

In his notices to the carrier and to the Board of his intention to file an ex parte submission, both of which notices are herein before reproduced, claimant states that he was discharged from work in the shops at McKees Rocks on September 19, 1955.

This contention of the claimant is without foundation as the carrier's records indicate that the claimant's name appears on the current McKees Rocks Shop District Carmen's Seniority Roster, issued January 1, 1957. To substantiate the fact that the claimant's name appears on this roster, there is submitted herewith as carrier's exhibit No. 4 mimeographed copy of Sheet No. 3 of "McKees Rocks Shop District—Seniority Roster—Class 'C' Carmen" on which it will be noted that claimant's name appears opposite number 114 and indicates his seniority date on this roster to be July 25, 1929. The letters "L/A" appearing after claimant's name indicate that he was on leave of absence as of January 1, 1957, the date the roster was issued. When the next roster is issued, if his status remains the same as it is as of today, March 27, 1957, the letters "L/A" following his name will be replaced by the letters "DP" to indicate that he is receiving a disability pension. The claimant's name will continue on the roster so long as he continues to receive a disability pension and is under 65 years of age. He is entitled to return to work at any time prior to attaining the age of 65, provided he can pass the required physical examination.

The carrier is submitting herewith as carrier's exhibit No. 5 photostatic copy of Form RL-5-A—"Notice to Employer of Annuity Award"—dated February 1, 1957, issued by the Railroad Retirement Board which indicates that claimant was awarded an annuity under Section 2 (a) 5 of the Railroad Retirement Act effective September 1, 1955, which substantiates the carrier's statement as to his present status.

CONCLUSION

Carrier has shown that since the personal injury claim in question comes within the meaning and purpose of the Federal Employers' Liability Act, the agreement between the carrier and the carmen's organization has no application in the claim and therefore the case does not fall within the judicial powers of the National Railroad Adjustment Board. Carrier has shown that claimant, to his full satisfaction, received more than \$11,800 from carrier in settlement of his injuries, and released carrier from all claims, grievances and causes of action of every kind, existing or hereafter arising. Further, the carrier has substantiated the fact that claimant was awarded a disability annuity and has not been discharged from service by the carrier.

The Carrier respectfully submits that the Board dismiss the claim.

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.

The parties to said dispute were given due notice of hearing thereon.

Oral hearing of the subject matter of this dispute disclosed that the petitioner is seeking an increase in his disability annuity which is not a subject within the jurisdiction of the Board; the petition is therefore dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1957.