

Award No. 2676
Docket No. 2534
2-B&O-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Electrical Workers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That The Baltimore and Ohio Railroad Company has unjustly deprived Electrician Jerry Cooper of his active service rights on and since January 17, 1956 in violation of the current agreement.

2. That accordingly The Baltimore and Ohio Railroad Company be ordered to restore this employe to the position to which assigned at the seniority point, Northwest District, from the latter part of 1951 through January 18, 1955 with compensation for all time he has been arbitrarily required to lose since the aforesaid date of January 17, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Baltimore and Ohio Railroad Company (hereinafter called the carrier) employed Electrician Jerry Cooper as such in the electrical department road service with a seniority dating as of July 1, 1940 on the Newark Division with headquarters at Newark, Ohio.

Electrician Jerry Cooper (hereinafter referred to as the claimant) continued in active service until after a finger injury on his right hand had occurred Tuesday, January 18, 1955. However, due to this and the intervening of other physical complications, the claimant had not qualified for resuming his duties before having been qualified to do so by Dr. Williams, medical examiner at Newark, Ohio with the exception not to climb poles, but when he reported for such duty on January 17, 1956, his supervisor would not permit him to return to work.

The claimant, nevertheless, was subsequently approved for returning to duty on March 9, 1956 by Dr. Seiber, staff surgeon at the Mercy Hospital, Pittsburgh, Pennsylvania and next, Dr. Kennedy of Newark, Ohio on April 26, 1956 issued a Certificate of Qualification in favor of the claimant, a copy of which is submitted herewith and identified as Exhibit A.

The gist of this whole matter is that the petitioner cannot do the work that is required of an electrician. He cannot do so by his own admission. He cannot do so by frank testimony of his own physician. He cannot do so by testimony of the carrier's examining physicians.

The petitioner himself told Dr. Sieber that "his duties should not include pole climbing, a certain amount of which he had been doing."

On the face of the record this tribunal cannot, and should not, properly be asked to sustain the claim as made. On the face of the record this tribunal certainly has no warrant to pass on any question dealing with the petitioner's physical ability to perform electrician's work, especially where all the evidences say he should not be so used. Under the circumstances, the claim for back pay is an astounding proposition that scarcely merits any consideration at all. It certainly cannot be maintained.

The committee has certainly made no request on the carrier that the petitioner be given "light" work in the line of electrician's duties. All General Chairman Fisher has said is that "* * * (the petitioner) is physically able to perform the duties of Electrician, with the exception, of course, that he cannot perform line work, which consists of climbing poles with the aid of a supporting body belt." The obvious and proper answer to any question as to whether the carrier could have assigned the petitioner "light" work in his line rests in the following distinct propositions: first, there are no positions in the petitioner's line in his seniority territory to which he could be assigned where he might not be required to climb poles; secondly, this condition would plainly remove any such work from the category of "light" work.

The petitioner's unsafe physical condition must go without substantial challenge. The petitioner's physical condition militates against his performing those duties normally expected of an electrician. It would be unsafe, if not palpably hazardous, to expect or to require the petitioner to perform these duties. This committee is placing an intolerable burden, not only upon this carrier, but also upon this tribunal, in seeking the kind of ruling that would flaunt the very evidence of the petitioner's physical condition.

The carrier submits this claim is without merit and should 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 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.

It appears that all road electrician positions comprehend some pole climbing. The certificate of claimant's doctor, employes' Exhibit A, after saying he is able to resume his trade as an electrician states, "I do not believe that he should do any pole climbing because of his unstable back." On the basis of that certificate it is obvious that claimant was not physically qualified to completely fulfill his former job.

Under the circumstances shown, that his original back injury was incurred while on duty, one would expect the management and the committee to exert every effort to place him on an inside job, such as the employes assert exist at Pittsburgh and Baltimore, instead of processing claims for a road electrician's job.

In the employes' rebuttal and at the hearing it was asserted that the claimant can climb poles but cannot do work on poles which requires laying back on the belt for extended periods of time. While that might make some difference in his employability as a road electrician, it is not in accordance with his doctor's work restriction against "any pole climbing," on the basis of which this claim is predicated, so it cannot be considered here. Hence this claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.