

Award No. 2989
Docket No. 2669
2-SP(T&NO)-CM-'58

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. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector Harry Williard Phillips was unjustly dealt with when he:

a) Was suspended or held out of service during the period May 25, 1956, and July 12, 1956; and

b) Was denied his contractual right to work Car Inspector's job in the Houston Terminal, Texas.

2. That accordingly the carrier be ordered to restore this employee's seniority privileges and rights to work Car Inspector's position in the Houston Terminals, Houston, Texas, and compensate this employee for all loss of wages from May 25, 1956, to July 12, 1956, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector (Carman) Harry Williard Phillips, hereinafter referred to as the claimant, was employed by the carrier as a car inspector, Houston Terminals, April 23, 1945. At the time the claimant was employed, he was given a physical examination by the carrier's examining surgeon, Doctor Feagin, Houston, Texas, and, Doctor Feagin found and passed the claimant as physically fit to perform the service required in the car department as a car inspector. The claimant worked eleven (11) years, one (1) month and three (3) days as a car inspector in the Houston Terminals and, at no time during that time, was his work found unsatisfactory, nor was he injured, or responsible for anyone being injured or, overlooked any defects on cars that he inspected that caused any failure in trains, or otherwise.

Second Division Award 1073;

Third Division Awards 727 and 2886;

Fourth Division Award 564.

The carrier respectfully submits that on the record of the instant case the proper findings and award made by the Board will be of the same effect as those made in its Award 1711. It reads as follows:

"Claimant admits he is, or at least has been, afflicted with epilepsy. In this respect Carrier's supervisory personnel are not charged with the duty of determining the medical question of his fitness to work because thereof. That is normally a question for doctors to determine. If, as a result of their diagnosis and recommendations, restrictions were placed upon claimant's work activities and carrier, in good faith, acted thereon that would exonerate carrier from any claim of unjust treatment to the extent it limited its actions within such restrictions.

Rule 27 referred to by claimant provides:

'Faithful Service. 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.'

"This rule does place on carrier a certain duty when an employe, who has given long and faithful service to it, such as claimant has done, becomes unable to handle all the duties of his position. It does not require carrier to create a position solely with duties which such employe can perform but it does obligate it to give him preference to any position which it has, the duties of which he can perform and to which his seniority would entitle him. * * *"

As previously stated, the carrier, as a matter of grace, did not terminate the claimant's employment even though that was justified upon the whole record. Instead, the carrier sought out work that it felt the claimant was physically able to perform. The record is conclusive that the superintendent, on June 15, 1956, expressed a willingness to permit Mr. Phillips to take an assignment on the Englewood car cleaning tracks, which was refused by the claimant. See carrier's Exhibit B. Obviously, the theory involved in the immediate preceding cited case is applicable to the instant dispute.

CONCLUSION:

For the reasons hereinabove shown, the contentions of the organization that the claimant should be restored to all seniority privileges is without merit. Also, the organization's request that the carrier be ordered to pay the claimant for time lost during the period May 25, 1956, through July 12, 1956, should be denied because his failure to work was of his own making.

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.

Carrier does not normally employ car inspectors who are blind in one eye. The claimant was so employed on April 22, 1945, due to error or fraudulent misrepresentation. When that became known upon a physical examination in May 1956, he was first disqualified as a car inspector and then permitted to work as such at restricted locations. The claim is that he should be permitted to exercise his seniority to obtain the crest position in the Englewood train yard.

That position requires rapid inspection of cars continuously. A requirement that the occupant have good vision is not unreasonable. Seniority cannot entitle one to a position if he lacks the physical fitness to perform it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.