

Award No. 3575

Docket No. 3170

2-SP(PL)-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist J. P. Murphy was unjustly deprived of his service rights and compensation when he was improperly removed from service at close of shift November 20, 1957, and as result of such action suffered loss of all compensation from November 20, 1957 to February 14, 1958, date on which he was restored to service.

2. That accordingly the carrier be ordered to compensate this employe for all time lost during the period referred to hereinabove.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. P. Murphy, hereinafter referred to as claimant, was employed as a journeyman machinist by the carrier at its Bayshore Shops on January 4, 1937, and remained in the continuous service of the carrier until September 14, 1956.

On September 14, 1956 claimant was granted a ninety day leave of absence because of illness, he subsequently applied for a disability annuity which was approved on March 22, 1957.

Pursuant to the requirements of the Railroad Retirement Act providing for periodic physical examination of employes receiving a disability annuity, claimant was re-examined by the carrier's staff physicians at the San Francisco General Hospital, and was found physically fit and qualified "to return to your former duties of Machinist." This is affirmed by copy of letter claimant received from the carrier's chief Surgeon under date of September 17, 1957, identified as Exhibit A.

Claimant returned to service on October 1, 1957 performing all of the duties required of any normal physically fit employe of his class and craft, until he was improperly removed from the service with close of his shift on November 20, 1957. Claimant was not examined by any staff physician during the period following his unconditional release, for return to duty by the carrier's chief surgeon.

On February 14, 1958 claimant was restored to service, returning to the same position he held prior to removal from service on November 20, 1957, but was denied compensation for time he was unjustly held out of service.

whether an employe is or is not fit for service is to be determined by the findings of the hospital authorities * * *

A copy of Decisions 2478, SAB No. 18, and 155, SAB No. 180, are submitted herewith and made a part of this submission as carrier's Exhibits M and N. The same reasoning applies to the case at issue, where the claimant has been found to be physically disqualified for the duties of his occupation, and has been permitted to work in a restricted capacity only.

The carrier here asserts that all of the contentions made by the petitioner are entirely without merit and should be disregarded.

CONCLUSION

All data herein submitted have been presented to the duly authorized representatives of the petitioner and are made a part of the particular question in dispute.

The carrier here asserts that the claim in this docket is entirely without basis or merit, and therefore respectfully requests that it 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.

Parties to said dispute waive right of appearance at hearing thereon.

Claimant Murphy, who had been receiving a disability annuity, was returned to the service of the carrier as of October 1, 1957 upon the recommendation of the Southern Pacific Company Hospital Department. This recommendation was based upon the opinion given by a Hospital Department physician as a result of the latter's examination of the claimant in September 1957. Under these circumstances, the carrier could not properly remove claimant from service for medical reasons except by a showing that his physical condition had subsequently deteriorated or that a later physical examination disclosed the prior medical findings to be incorrect. No such showing is made in this docket. It appears that the disputed action of the carrier was based upon information supplied to it in error. This circumstance cannot be held to deprive the claimant of the opportunity to enforce his rights to employment as provided under the controlling agreement, however.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.