

Award No. 3634

Docket No. 3361

2-C&EI-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous, when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago & Eastern Illinois Railroad violated the current working agreement when they improperly furloughed carman helper Adam Bettag, thus denying him the exercise of his seniority rights.
2. That accordingly he be compensated for eight (8) hours for each day he has been deprived from working since November 22, 1957.

EMPLOYEES' STATEMENT OF FACTS: On January 29, 1923, Adam Bettag was hired as a carman helper on the C&EI Railroad.

Carman Helper Adam Bettag's name appears on carmen helper's seniority roster every year for the past 34 years.

In 1940, Mr. Adam Bettag sustained an injury to his eye off the job, where it was necessary for Mr. Bettag and his wife to sign a waiver of damages against the company, as the injury was not sustained on company property.

In the year 1949, the C&EI Railroad had a big reduction in force. Because of this reduction in force, there was not sufficient work in the tool room that Mr. Bettag was assigned to, so management assigned him to other jobs other than tool room attendant, which job he had been doing since 1940 at the time of the injury to his eye.

The work that Mr. Bettag was assigned to do was typical carmen helper's work—that of bucking rivets, reaming holes, grinding side of cars and welds, working on sandblasting machine and anything else considered carmen helper's work;—this work was required of Mr. Bettag by the foreman at that time, Mr. Bill Weinke.

in charge assert that claimant was permitted to perform only such duties as he might handle without hazard to himself or his fellow employes. It is pertinent to point out, however, that even if claimant were on occasion used for hazardous work (not admitting that such was the case) it would have been done in violation of the chief surgeon's instructions and decision. In any event, such an occasional incident would not invalidate the decision nor the concurrence of claimant and the organization representatives therein.

The agreement rules here controlling do not limit the right of management to determine an employes' physical fitness for his regular occupation. In the instant case it was the decision of the carrier's chief surgeon that claimant's physical condition was such that he could not safely perform the hazardous duties of his regular occupation of carman-helper without jeopardy to himself and his fellow employes. The chief surgeon's decision was not capricious, but was based on sound medical principles, a knowledge of the hazards incident to the occupation of carman-helper, and prior experience with others having a similar handicap. The decision of the chief surgeon was by affirmative action on the part of claimant and his representative, accepted and concurred in for a period of seven years. There has not been any change in circumstances that would justify a reversal of the decision or a repudiation of the organization's and claimant's concurrence and acceptance thereof.

The facts and circumstances applied to the agreement rules here controlling necessitates a denial award.

FINDINGS: The Second Division of the Adjustment Board, based 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 were given due notice of hearing thereon.

Consequent to an eye injury which resulted in the loss of an eye, the chief surgeon disqualified claimant Adam Bettag for hazardous duty on July 1, 1940. The Board deems it improper to substitute its judgement for that of the carrier concerning what constitutes hazardous duty, where, as here, no discrimination, bias, or arbitrariness was shown.

The disqualification led to carrier's letter of July 24, 1940 (Carrier's exhibit B), restricting Bettag to the protected position of tool room attendant. It is persuasive that this letter represented the terms of an agreement arrived at in conference between the General Chairman and the Superintendent of Motive Power. This arrangement was accepted by all concerned and governed the situation from July 24, 1940 to November 22, 1957.

Under the circumstances the Board must deny the claim.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1961.