

Award No. 3719

Docket No. 3389

2-AT&SF-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — Western Lines**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Gerald L. McGinnis has been unjustly dealt with by being held out of service since May 6, 1957.

2. That accordingly the Carrier be ordered to restore Carman Gerald L. McGinnis to service and pay him for all time lost retro-active to May 6, 1957 and the claim to be continuous, at applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carman Gerald L. McGinnis, hereinafter referred to as the claimant, was first employed by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at Albuquerque, New Mexico, as a carman apprentice with an indenture date of August 20, 1953. After completing his apprenticeship, the claimant was given a carman's seniority date of December 19, 1956. The claimant was regularly employed, bulletined and assigned until March 9, 1957, on the first shift, work week of Monday through Friday, rest days of Saturday and Sunday.

On March 9, 1957, the claimant requested and was granted a leave of absence until May 16, 1957. However, on April 25, 1957, the claimant was furloughed and requested a transfer to Belen, New Mexico, under the appropriate Rule 26 of the current working agreement, since there were twelve (12) employees working as carmen without seniority.

On May 6, 1957, the claimant availed and made proper application for employment at Belen, New Mexico, requesting to displace men working as carmen without seniority. A carrier representative advised the claimant that

other employment. Please see in that connection and for instance, Second Division Awards 3084, 2811, 2653, and 1638, First Division Award 15765, Third Division Awards 6074 and 6362, and Fourth Division Award 637.

Carrier asserts that it had no other choice than to deny G. L. McGinnis' request for employment at Belen, in view of the advice of Dr. Koons, and requests that this Board deny the employees' claim in its entirety.

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 were given due notice of hearing thereon.

Claimant was employed by carrier on August 20, 1953 and on completion of apprenticeship on December 19, 1956 was given certificate thereof stating that "His workmanship, services and conduct have been satisfactory." Thereafter he was retained in service as carman at Albuquerque until March 9, 1957 when he was hospitalized for mental observation at the instance of the city police, who reported that they were called by claimant's wife (from whom he obtained a divorce that month) complaining that he had been drinking and had tried to beat her up; that he was found in a highly agitated mental state and had to be restrained until an ambulance arrived. He was granted leave of absence from that date. There is no showing as to the nature or extent of his hospitalization but in response to an inquiry as to his condition, Dr. Koons, the Company doctor in charge of the Santa Fe hospital reported to the Superintendent of Shops on April 2, in part as follows:

"He was last seen in this clinic March 20, 1957 at which time our impression of severe psychoneurotic reaction was confirmed. I believe that he has considerable marital difficulties which are probably precipitating causes, or at least contributory. On his last visit we extended his leave of absence of 15 April and requested that he return to see us at that time for evaluation.

"As you are well aware, such persons may become definite safety hazards, both to themselves and to other persons because of their unpredictable and erratic behavior."

Our next information is that on May 6, some three weeks after claimant was to return for "evaluation," Company doctor Koons gave to claimant a Discharge From Treatment on standard form four days following telephone conversation with the Assistant General Manager advising him that claimant was at the hospital to procure a release to return to service. The release as signed by the Company doctor recited that claimant had come under his care on 3-9 1957 for treatment for illness and stated that he had been discharged from treatment and that he was qualified for regular duties May 6, 1957.

Claimant, who had been furloughed on April 22, immediately made application for employment at Belen to which his seniority entitled him, and on request there he obtained a certificate signed by the Superintendent of Shops

stating the dates of his apprenticeships and service and stating as to conduct and cause of leaving: "Conduct satisfactory. Laid off in force reduction." With this certificate and his discharge by Dr. Koons claimant again made application and was informed that "due to his condition" he could not be given a transfer to Belen. Thereupon he filed a continuing claim for time lost and it was denied on the same ground.

Claimant was entitled to return to service at Belen unless he was disqualified by his so called "condition". In such case the decision as to qualification must be made initially by a Company doctor. It must be made not by confidential letter or telephone call or double talk or generality but by specific statement to claimant or his representative with reasonable certainty as to the disease or ailment of which the employe is alleged to be suffering so that he can have examination as to such ailment by a physician of his own choice as is his right under Item 19 of Appendix "B" to the Agreement.

Only if an employe is disqualified by a Company doctor may he proceed under Item 19 to protect himself from unfair withholding from service. There is no showing that claimant has at any time been disqualified by a Company doctor. To the contrary he was given a release by him stating that he was qualified for regular duties and with that in effect he was improperly withheld from service.

AWARD

Claim sustained with payment for loss of time less outside earnings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1961.