

Award No. 3749

Docket No. 3734

2-CRI&P-FO-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Stationary Fireman & Laborer, R. C. Peterson, was unjustly deprived of his service rights when he was arbitrarily removed from service on June 30, 1959, and his record posted as super-annuated.
2. That accordingly the Carrier be ordered to restore the aforesaid employe to service and compensate him for all time lost since June 30, 1959.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. C. Peterson, 44 years of age, hereinafter referred to as the claimant, entered the service of the Chicago, Rock Island & Pacific Railroad Co., hereinafter referred to as the carrier, as a laborer on August 7, 1945.

The claimant has continued in the service of the carrier since that date, working alternately as a laborer and/or stationary fireman at both the carrier's power plants located at 49th & 124th St. Shops and in the various classifications of laborer in the carrier's 47th to 51st St. shops and car yards.

On or about January 16, 1959, the claimant sustained injury to his right eye, resulting in Prosthesis of that eye.

Following his absence account this injury, the claimant was examined by the carrier's chief surgeon on March 30, 1959, and reported for and commenced work as a stationary fireman at the carrier's 49th Street power plant on April 10, 1959.

Some 10 days later the claimant received the following letter from Superintendent J. B. Buffalo:

On basis of the facts in this case, we respectfully submit we have not violated any agreement, nor the claimant's rights, and request denial of the claim.

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 employees 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 waived right of appearance at hearing thereon.

R. C. Peterson, the claimant entered the service of the Carrier as laborer in August 1945. On or about January 16, 1959, in an off duty accident he suffered complete loss of the vision in his right eye, the eye was removed.

The claimant was examined by the Carrier's Doctor, and on April 20, 1959, a letter was directed to Peterson by Superintendent Buffalo that "favorable consideration has been given to your temporary retention in the service as a Stationary Fireman" restricted to certain conditions set out in the letter. He continued in the position as stationary fireman to June 1, 1959, at which time the position of stationary fireman was abolished, claimant immediately exercised his seniority on a position as a laborer, continuing to work that position to June 30, 1959, when he was advised that he was sub-standard under Carrier physical-re-examination requirements and was removed from service on June 30, 1959.

The employes contend that the claimant was arbitrarily and unjustly removed from service without the benefit of the procedures provided in the memorandum of understanding regarding physical re-examination of employes.

There is no controversy as to the claimant having sight in only one eye. He was examined by his own doctor and his findings and that of the carrier's doctor are in the record. Therefore there was no necessity for bringing into operation the procedures outlined in Employees Exhibit "B". See Award 19538, First Division.

The Carrier's visual requirements for Class C employes such as this claimant, are 20/40 in one eye and 20/50 in the other eye, with or without glasses.

The Carrier Chief Surgeon, examined the claimant, and reported the loss of his right eye. The carrier considered the claimant not to be a safe employe, not only as far as he was concerned, but likewise, his fellow co-workers and on June 24, 1959, he was super-annuated.

In award no. 17154, First Division, with Judge Stone as Referee said:

"The setting up of standards of physical fitness is a responsibility of management, and may not be challenged by us in the absences of evidence of bad faith or abuse."

See Award 1478, Second Division.

But it is the claim of the employes that claimant was arbitrarily and unjustly removed from service but cite no evidence that justify such a statement.

Considering the facts in this case, we are of the opinion that the carrier was acting in good faith. The responsibility of management for the safety of its employes and the public requires the use of reasonable discretion in determining the physical condition of its employes.

We think that the carrier acted fairly, that there was no abuse of discretion, and that the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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

DISSENT OF LABOR MEMBERS TO AWARD 3749

The majority erred when they failed to give proper consideration to the facts of record in this docket, which clearly demonstrated the claimant's ability to safely perform the duties of his assignment.

The record establishes the fact that the Carrier arbitrarily disqualified the claimant from all service account of the loss of an eye and we are forced to dissent.

James B. Zink
R. W. Blake
T. E. Losey
E. W. Wiesner
C. E. Goodlin