

Award No. 3765

Docket No. 3551

2-GN-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman Helper Arthur Eide was improperly furloughed on June 23, 1958 while a junior helper was retained in service.

2. That accordingly the Carrier be ordered to restore Arthur Eide to active service and compensate him for all time lost as a result of being improperly furloughed.

EMPLOYEES' STATEMENT OF FACTS: Arthur Eide, hereinafter referred to as the claimant, was last employed by the Great Northern Railway Company in the Kelly Lake, Minnesota car shop as a carman helper April 4, 1935.

On June 20, 1958, the carrier chose to reduce its force by two carmen helpers, effective Monday, June 23, 1958.

On June 23, 1958, claimant, whose seniority date is April 4, 1935, was furloughed and a junior carman helper, namely, Dan Rose, whose seniority date is October 7, 1939, was retained in the service.

Time slips were filed by claimant for June 24, 25, 26, 27 and 30, and July 1, 2, 3, 4 and 7, 1958, which were declined by Car Foreman Ernest Nigra, who gave as his reason for declining the claim:

"* * * as you are not qualified to drive a truck."

which denials were dated July 7, 1958 and July 10, 1958.

Upon being advised that he was being furloughed account alleged faulty visual condition, claimant went to his optometrist, Mr. E. G. Threinen, at Hibbing, Minnesota, who, following an examination, gave claimant a statement as follows:

The establishing, maintaining and enforcing of minimum physical standards for employment is a right and responsibility of railroad management. This function has never been delegated either to the union or to the claimant.

The carrier, and the carrier alone, owes a duty and responsibility to the public and to its employees to operate in a safe manner. If the carrier creates a hazard by employing an unsafe person, the carrier must answer for penalties and damages imposed by law. The carrier cannot escape its responsibilities by relying upon the opinions and suppositions expressed by either outside doctors or union functionaries. These responsibilities are imposed against the carrier and they must be met by management. In this particular case, it was, (and continues to be) our position that carrier simply could not take the chance of exposing this "one-eyed" employee or fellow employees with whom he would be working to hazards by allowing him to drive a truck, even though his seniority entitled him to occupy a position wherein truck driving was included as the principal duty. Carrier submits that its action in disqualifying claimant from a position which included truck driving as the principal duty was proper and was not inconsistent with an established practice on this property and was not inconsistent with Board decisions involving cases containing similar circumstances.

From the foregoing it can readily be ascertained that carrier's action of denying the claimant a position wherein he would have been required to drive a truck which he was not visually qualified to do was entirely proper and was a commonsense decision.

The total record in this case, which includes reliable evidence to the effect that claimant was not visually qualified to drive a carrier truck plus the fact that claimant is now suffering from cerebral arteriosclerosis indicates conclusively that this claim of the employees is entirely lacking in merit, therefore must 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Upon the abolishment of his position on June 24, 1958, Claimant was furloughed on the ground that the only position open to him included truck driving, and that he could not meet Carrier's visual standards for such work. Those standards are not disclosed.

He was recalled for other than truck driving service on two occasions, the final one ending on May 9, 1959, when he obtained a leave of absence for physical disability diagnosed by his physician as cerebral arteriosclerosis, the degree of which is not stated.

The question is whether the record sustains claimant's furlough on June 24, 1958 for defective eyesight.

The evidence shows that for many years his sight has been defective and has required corrective glasses. After an examination on May 14, 1958 the Carrier's examiner wrote on his record:

"One-eyed man, approved subject to wearing shatterproof lens while on duty. * * * ANNUAL. Approved for ONE year, glasses to be worn constantly, and PROVIDE himself and ALWAYS carry at least one extra pair. * * * Advised to have examination for new glasses."

Carrier says in its Ex Parte Presentation:

"Based on the results of visual examinations given claimant by Carrier doctors between 1938 and 1958, outlined above, Carrier's Chief Medical Officer classified claimant as a "One-eyed man" and, further, would not approve claimant for a position which included driving a Carrier truck as one of its principal duties."

Thus the Chief Medical Officer accepted the examiner's description of claimant as a one-eyed man. But the Carrier's report of the examination rated claimant's eyes as follows:

"without glasses right eye 33/100, left 10/100; with glasses right eye 20/40, left eye 20/40."

During oral argument it was stated that the first reading above should have been 3/100.

An independent examination at the Morsman Clinic at Hibbing on August 12, 1958, gave each of claimant's eyes a rating of 17/200 without glasses and 20/30 with them. L. M. Moreman, M. D., certified: "Mr. Eide's eyes are all right to drive a truck". E. G. Threinen, an optometrist at Hibbing, had certified in July: "There is nothing wrong with Mr. Eide's vision which would prevent his driving a truck".

(Claimant has a Minnesota chauffeur's license and drives his own car sixty miles a day to and from work when employed by the Carrier.)

The Organization's proposal of an examination by an independent eye specialist whose decision should be final was rejected by the Carrier on the ground that it could not delegate to outsiders its responsibility for the safe operation of trucks.

Standard authorities such as the "Oculo-Refractive Cyclopedia and Dictionary" (1944) by Thomas G. Atkinson, M. D. and "Introduction to Physiological Optics (1937) by Professor P. C. Southall of Columbia University, explain that chart ratings such as 20/40 are not tests of vision, but of visual acuity or keenness. Thus a 20/30 or 20/40 rating does not mean that one can only see at 20 feet objects which he should see at 30 or 40, but that he can only distinguish at 20 feet a letter or character which he should be able to read at 30 or 40. Obviously qualifications to drive depend more upon the ability to see objects quickly than to distinguish letters. The distance at which a driver can distinguish between the letters "C" and "O" is not determinative of his visual ability to drive safely.

(Many adults need glasses but nevertheless are allowed drivers' licenses, as claimant was although his need for glasses was noted.)

In its decision the Carrier rejected, not only the opinions of two independent eye specialists, but also the recommendation of its own examiner, who in spite of characterizing claimant as a one-eyed man approved him for one year's duty, which would have governed the entire period here involved. Furthermore, no one is properly described as one-eyed, if both his eyes can be corrected with glasses so as to read at twenty feet letters which the fully normal eye can read at forty.

The record lacks any evidence that claimant was disqualified to drive trucks safely. On the contrary, it contains ample evidence that he was fully qualified to do so.)

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 16th day of June 1961.