Award No. 3872

Docket No. 3829

2-GN-F&O-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO (Firemen & Oilers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Roundhouse Laborer John Heryla, Minneapolis Junction Roundhouse, was improperly removed from his assignment as Classified Laborer (Hostler Helper).

2. That accordingly the Carrier be ordered to restore the Claimant to his former assignment as Classified Laborer (Hostler Helper), and reimburse him for the difference in rate of pay as between Common Laborer and Classified Laborer (Hostler Helper), 40.8¢ per hour, eight hours per day for each work day since May 19, 1959.

EMPLOYES' STATEMENT OF FACTS: Mr. John Heryla, hereinafter referred to as the claimant, was first employed by the Great Northern Railway Company, hereinafter referred to as the carrier, as a laborer in its Minneapolis Junction Roundhouse on May 27, 1927, and has worked continuously since that time in various positions, including laborer, classified laborer (hostler helper) and boilermaker helper.

At the time the claimant was hired by the carrier, he had sight in only one eye. There has been no change in his sight during the years up to the present time.

In the years 1928, 1929, 1930 and 1931, the claimant was assigned the work of laborer, most of the time working as hostler helper. The duties of his assignment required that he assist the hostler in the movement of locomotives, including such moves on the main line. Main line moves were required when the locomotives were of such length or size that they could not be turned on the turn table. In these instances, it was necessary to turn them on the WYE.

to this Board if the claimant organization was charged with a share of the duties and responsibilities to the public and to the employes which is imposed on the carrier.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. It is an undisputed fact that the claimant has lost his left eye and that his right eye must be corrected with glasses. Because of these deficiencies in vision the claimant is not now and never has been visually qualified to perform the major duties of an outside hostler helper at Minneapolis Junction roundhouse.

2. The fact that during certain period of time in the past claimant was allowed to occupy a position of outside hostler helper and receive the outside hostler helpers' rate of pay even though he was actually restricted to performing the duties of an inside hostler helper within the vicinity of the Minneapolis Junction roundhouse, does not require the carrier to create such a position at the present time.

3. The establishing, maintaining and enforcing of minimum physical standards for employment in any occupation in the carrier's service is the sole responsibility and right of the railroad management. This function has not been delegated to the claimant or to the organization, nor can it be usurped by the claimant or the organization.

Yet, the organization in this case seeks to force the carrier to take such action which would render the carrier powerless to meet its legal and moral obligations to the claimant, his fellow employes and the general public.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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 were given due notice of hearing thereon.

The determination of this case rests upon the answer to the question whether the Carrier was reasonably justified in disqualifying the Claimant for the position of Hostler Helper on May 19, 1959, because of a visual deficiency resulting from the fact that he has vision in one eye only. For the reasons hereinafter stated, we hold that the answer is in the negative.

A Carrier's right and obligation to establish and maintain reasonable minimum physical standards for its employes in the interest of safety are beyond dispute. This principle has been ably stated in Second Division Award 728 as follows:

> "The carrier's liability for the safe operation of its transportation facilities makes it responsible for the fitness of its employes to hold their respective positions. While this liability does not give a carrier a license to hold employes out of service

at will, where it acts in good faith and **upon facts that justify such action** it is clearly within its rights under the prevailing agreement." (Emphasis ours.) See also Awards: 3749 of this Division and 19538 of the First Division.

We find ourselves in full agreement with said statement but are of the opinion that the facts underlying the instant case do not justify the Carrier's action which caused this grievance.

At the outset, it should be noted that the Claimant's sight was restricted to one eye when he was first employed by the Carrier in 1927 and that the latter has been aware of said defect ever since. In addition, the record reveals that the Claimant was awarded the position of Hostler Helper on August 17, 1954, (Organization Exhibit "C") and continued to hold it until May 19, 1959, when he was removed therefrom by the Carrier on the sole ground that his vision is confined to one eye.

The available evidence has satisfied us that, at least for one year, namely, from November 1, 1955, until November 1, 1956, the Claimant worked not only within the confinement of the roundhouse tracks but also went on the main line **on many occasions** (Affidavits of Hostlers Steinke and Corbett). There is nothing in the record which would even remotely indicate that, during the period of about five years in which he worked as a Hostler Helper both within and without the confinement of the roundhouse tracks, his restricted vision adversely affected the efficient performance of his duties and obligations or resulted in a safety hazard. We are also impressed by the expert opinion of Dr. Mark L. Norman, an eye specialist, that there has been no change in the ocular findings regarding the Claimant for about thirty years. We have found nothing in the record which would contradict Dr. Norman's statement. This is especially true in view of the fact that the Carrier has not submitted in evidence the medical reports of Dr. E. R. Anderson or its Chief Medical Officer on which it relied when it disqualified the Claimant for the position of Hostler Helper.

Finally, the evidence on the record considered as a whole is insufficient to prove that the job content of the position of Hostler Helper as held by the Claimant at the time of his removal therefrom had been so substantially changed as to make him unqualified efficiently and safely to perform his job because of his impaired vision.

In summary, we fail to see that the specific facts underlying this case reasonably justify the Carrier's action here in dispute. Consequently, the Claimant is entitled to be restored to his former position as Classified Laborer (Hostler Helper) as well as to be reimbursed for the loss in the pro rata rate suffered by him due the fact that he was assigned to the position of Common Laborer subsequently to May 19, 1959.

AWARD

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1961.