

Award No. 3893

Docket No. 3850

2-KIT-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Sheet Metal Workers)**

**THE KENTUCKY AND INDIANA
TERMINAL RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Sheet Metal Worker Maurice G. Taylor was unjustly dealt with when he was removed from service on June 4, 1959.
2. That the Carrier be ordered to restore him to service and reimburse him for all time lost.

EMPLOYEES' STATEMENT OF FACTS: The Kentucky and Indiana Terminal Railroad Company, hereinafter referred to as the carrier, employs sheet metal workers at its shops in Louisville, Kentucky. Among those sheet metal workers the carrier has for thirty-six (36) years employed Maurice G. Taylor, hereinafter referred to as the claimant. For the last nineteen (19) years, the claimant has worked as a pipefitter after being promoted from the helpers ranks in 1940.

In the middle of the year 1955, the claimant, after being assigned to work on Diesel Locomotives in 1953, experienced a rash or a breaking out on the hands. The breaking out got progressively worse and after tests were made by doctors to determine the cause, the carrier finally assigned the claimant, effective February 2, 1956, to a job consisting of maintenance work where he would have very little contact with diesel locomotives and/or chromates.

Upon being assigned to the maintenance work the rash disappeared and did not reappear until two (2) occasions (March, 1957 and July, 1958). On each of these occasions, the carrier had ordered the claimant to return to work on diesel locomotives. After a few days working on the diesels, the claimant's hands broke out in a rash and he was then ordered back to the maintenance job where his hands immediately cleared.

The carrier offered the claimant one-half ($\frac{1}{2}$) pay for the time he lost from work prior to being assigned to the maintenance job. Under the cir-

ant comes in contact with chromates, he will break out; and that once an individual develops sensitivity to chromate he is always susceptible to it.

Claimant Taylor can, according to his expert's testimony, only be free from this irritation if he stays away from chromates, and that the usual recommendation in a case of industrial or occupational dermatitis is to tell the person to stay away from it.

The organization in its letter of appeal, on Nov. 9, 1959, took the position that Claimant Taylor should be allowed to return to work in the Maintenance Department where he would not come in contact with treated water. There are, however, no K&I pipefitter jobs since the advent of diesel engines (and the K&I is one hundred per cent dieselized) that preclude a pipefitter from coming into contact with chromates during some part of his tour of duty. Job No. 4 was one of the jobs that required an employee to come into contact with it the least, and with the management's and union's consent Claimant Taylor exercised displacement rights onto that job.

After Claimant Taylor bid onto and worked this job he, according to his own testimony, broke out quite a few times. And it was while on this job that he brought suit for damages against the Company in United States District Court and was awarded by the jury which heard the case the sum of \$3750.00.

Within a few weeks after judgment was entered reflecting the jury's verdict Mr. Taylor was called into the master mechanic's office and asked to physically disqualify himself (in view of his physician's testimony that he had become permanently sensitized to chromates) because there was not in existence a pipefitter job at that time (June 4, 1959), nor has there been one since that time, which would preclude a pipefitter from coming into contact with chromates. Claimant Taylor declined to physically disqualify himself in spite of his physician's testimony, and his own to the effect that every time he comes in contact with chromates he broke out in an irritating rash.

Claimant Taylor having failed to disqualify himself the Company did so, explaining to him that if he was permitted to continue on his pipefitter job which brought him in contact with chromates management would just be inviting an additional lawsuit.

Of course Claimant Taylor's name has not been removed from the seniority roster because he has not been discharged. The seniority roster shows opposite Taylor's name, "Disqualified account physical condition." Claimant Taylor has not been deprived of pass privileges accorded employees off account sickness or similar cause.

Mr. Taylor will be returned to work as soon as a pipefitter job becomes available which will preclude him from coming into contact with chromates.

Management ought not to be required to perform an act which adversely affects the health of its employee. To return Claimant Taylor will jeopardize his health. We pray the Board not to order his return until such time as there is in existence a job which will preclude him from coming into contact with chromates.

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 waived right of appearance at hearing thereon.

It is a disputed fact as to whether the Claimant's physical condition was such as to warrant the carrier's withholding him from service.

This is a question of fact that can only be passed upon by competent medical authorities. If after examination, by a neutral physician if necessary, the Claimant is found physically able to return to active service within his class, he should be reinstated in accordance with his seniority rights.

If it is determined that he was physically able to perform the work on June 4, 1959, and his seniority would have entitled him to work, he will have a claim for reimbursement of lost wages.

AWARD

Claim 1. Sustained in accordance with the findings.

Claim 2. Remanded to determine the fact question in accordance with the findings, after the determination of the medical question. If the parties are unable to agree, then such medical evidence shall be presented to the Division by the parties for final determination of the dispute in this docket.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1961.