

Award No. 4036

Docket No. 3889

2-SP-F&O-'62

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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Mr. Glen E. Newcomer, laborer at Roseville Roundhouse, Roseville, California, was improperly removed from the carrier's service on August 25, 1959.

2. That accordingly the Carrier be ordered to compensate Mr. Glen E. Newcomer at the pro rata rate of pay for all time lost, at eight (8) hours per day and five (5) days per week since August 25, 1959 and up to the date of March 7, 1960 when the Carrier returned Mr. Glen E. Newcomer to his regular assigned position.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Company (Pacific Lines) hereinafter referred to as the carrier, maintains at Roseville, California, a repair shop known as Roseville Roundhouse, wherein Laborer Glen E. Newcomer, hereinafter referred to as the claimant, was employed as a laborer with a seniority date of August 25, 1952. Claimant has been employed in several different positions with the carrier for seven (7) years giving the carrier faithful service.

The carrier removed the claimant from its service effective with the close of his shift on August 24, 1959. This was done verbally by his foreman and the claimant was informed in writing on August 31, 1959, by Master Mechanic J. K. Edwards, that effective August 25, 1959, he was suspended due to his physical condition of not having sufficient vision to warrant his working at Roseville Shops.

Under date of October 20, 1959, Local Chairman Tony Madaloni filed a claim in writing with Master Mechanic J. K. Edwards protesting the carrier's action of removing the claimant from service and claimed compensation for all time lost. Master Mechanic J. K. Edwards replied under the date of October 23, 1959, stating that further investigation is necessary and would advise at a later date.

On November 24, 1959, Local Chairman Tony Madaloni received a reply from Master Mechanic J. K. Edwards, with reference to his claim of October 20, 1959, in which he states that due to the recommendation of Dr. W. F.

learned that his vision measured at 20/200 was not sufficient for the performance of his duties.

Upon receipt of the chief surgeon's letter of February 24, 1960, that claimant's vision had improved to 20/70 in both eyes, with proper tinted glasses, he was informed on March 1, 1960, that he could return to duty.

The carrier asserts that there is no basis for the claim in this docket and that it should be denied in its entirety.

CONCLUSION: All data herein submitted have been presented to the duly authorized representatives of the petitioner and are made a part of the particular question in dispute.

The carrier here asserts that the claim in this docket is entirely without basis or merit, and therefore respectfully requests that it 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 waived right of appearance at hearing thereon.

Claimant has a congenital impairment of eyesight, stable in nature and known as albinism, requiring tinted corrective glasses. Shortly after claimant's restoration to service an optometrist who had examined his eyes repeatedly between 1953 and March 28, 1960, certified that the condition had been quite constant during that time; that his ability to pass yearly examinations for a limited driver's license and to perform his regular work was due to his using to the utmost what visual acuity he had, and not to any improvement thereof; and that his glasses had been unchanged since April 21, 1958, and needed no correction.

While there is some variation in the reports and opinions of examining oculists at the carrier's General Hospital, it was certified more than once during the period of claimant's suspension that he could safely be restored to duty, and he was reinstated as of either March 4 or March 7, 1960. The record does not show sufficient variation in the condition of his eyesight to warrant his suspension during that period.

AWARD

Claim 1 sustained.

Claim 2 sustained for payment as claimed for the period between August 25, 1959, and claimant's return to carrier's service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1962.