

Award No. 4258
Docket No. 4204
2-SP(PL)-BK-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Blacksmiths)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: Claim of Employees: 1. That under the current agreement the Carrier, on February 9, 1961 and February 13, 1961, unjustly withheld from service the following named employees of the Blacksmith's Craft in Sacramento General Shops:

CIRILO CHAVEZ and CESARE VALENTINI

2. That the Carrier be ordered to compensate the above named employees, Blacksmith Helpers, Cirilo Chavez and Cesare Valentini for eight hours pay for each work day from February 9, 1961 to March 3, 1961 and February 13, 1961 to March 3, 1961 respectively, including the holiday February 22, 1961 and eight hours pay for each work day thereafter that employment was available to them until restored to service, account of being deprived of their seniority service rights to re-employment in accordance with Rule 29 of the Current Controlling Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Company (Pacific Lines) hereinafter referred to as the carrier, maintains at Sacramento, California, a general shops known as the Sacramento General Shops, wherein Blacksmith Helper, Cirilo Chavez and Cesare Valentini, hereinafter referred to as the claimants, were employed as blacksmith helpers, Cirilo Chavez seniority date August 24, 1948 and Cesare Valentini seniority date August 8, 1950. The above named claimants were furloughed in accordance with the provisions of Rule 29 of the current agreement on January 7, 1961.

The above named claimants each received a letter from the carrier dated February 8, 1961 advising that there were vacancies in the shop for blacksmith helpers and if they cared to take advantage of this opportunity for re-employment, they were to report to the office immediately. Claimant Cesare Valentini reported to the office on February 9, 1961 and Claimant Cirilo Chavez reported to the office on February 13, 1961. The claimants were not allowed to return to work on the dates they reported for duty in accordance with

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 Chavez, with seniority date of August 24, 1948, and Claimant Valentini, with seniority from August 8, 1950 were both blacksmith helpers and both were furloughed on January 7, 1961, account reduction in forces. Both claimants were subsequently advised by letter dated February 8, 1961, that there were vacancies for blacksmith helpers and to report immediately if they wanted reemployment. Chavez reported on February 9 and Valentini on February 13. Upon so reporting, both claimants were directed to report to the Carrier's Medical Department Doctor for general physical examination. Claimants did so report and were examined and the results of the examinations were duly sent to the Carrier by the Medical Examiner. Upon receipt of the medical reports the Carrier refused to restore the Claimants to service on the ground that each of them was physically disqualified to fill his respective position.

While the claim was under consideration by the parties on the property the Employes took two positions: (1) that since claimants had been duly examined and found physically fit at the times of their original employment in 1948 and 1950, respectively, there was no contractual right on the part of the Carrier to require them to be re-examined after they were furloughed in 1961; and (2) that the Carrier arbitrarily and wrongfully refused to furnish the employes with copies of the Medical Examiner's original reports pertaining to the Claimants' physical condition at the times of their initial employment and also at the time the re-examinations were made in February, 1961.

We do not find it necessary to consider the Employes' first proposition, since it appears that they did submit to the re-examinations without protest at the time and any controversy with respect thereto is now moot.

We can perceive of no reasonable justification, however, for the refusal of the Carrier to make available to the Claimants while the claims were under consideration on the property the findings of its Medical Examiner which were the apparent basis for its refusal to restore Claimants to the positions from which they had been furloughed. The act of the Carrier in endeavoring to bring these reports into the record for the first time after the claims had reached this Board amounts to an admission of their pertinency, though the recognized procedure of this agency, binding alike on the parties and the Board, precludes us from considering these reports. We think it will suffice to add that the seniority rights of employes and their rights with respect to continuing employment by virtue thereof ought not be cut off for reasons withheld from them during the period when the parties are charged with the obligation of making a good-faith effort to resolve their differences. In short, there is nothing in the record properly before us from which we can determine whether the Carrier's action in refusing to restore the Claimants to their positions was or was not justified.

AWARD

Claim sustained for the period or periods when work was available on the positions previously occupied by the Claimants and they were held out of service, Carrier to have credit for their earnings in other employment, and subject to the Carrier's right to require the Claimants to be re-examined to determine their physical fitness for future service in said positions, in accordance with the standards set forth in our Award No. 1462.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1963.