

Award No. 4653

Docket No. 4632

2-SLSF-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the Carrier failed to comply with the procedural requirements of Article 5, Section 1(a) of the August 21, 1954 Agreement, and accordingly, the claim should be allowed as presented.

2—That under the current agreement Groundman John F. Henry was unjustly suspended on March 12, 1963, from service.

3—That accordingly the Carrier be ordered to reinstate John F. Henry to service with all rights unimpaired under the controlling agreements and pay for all time lost.

EMPLOYES' STATEMENT OF FACTS: Groundman John F. Henry, hereinafter referred to as the claimant was employed by the carrier as a groundman on January 8, 1925, and he remained in the service as such until March 12, 1963, when he was suspended from service.

Under date of April 6, 1963, the undersigned appealed the case to Superintendent Communications R. M. Laurenson.

Mr. Laurenson answered under date of April 15, 1963.

Under date of May 1, 1963, the case was appealed to General Superintendent R. W. Troth.

No answer was received from Mr. Troth within the required 60 days, and under date of July 27, 1963, the undersigned appealed to Director, Labor Relations, T. P. Deaton.

Under date of August 19, 1963, Mr. Troth confirmed discussion with the undersigned.

Mr. Deaton in letter dated August 20, 1963, advised the undersigned that for reasons stated therein the matter was not properly before him and ad-

"It is my opinion that Mr. Henry is physically not able to do his duties as a groundman on line gang.

I would recommend that he have a physical examination at RR Hospital. Appears that there is something wrong with his back."

The foreman had the opportunity to observe the claimant during the performance of his work as a groundman which consisted of heavy lifting. To permit the claimant to work under such circumstances could result in serious injury to himself and to other members of the gang in which he was employed.

The carrier was entirely within its rights to order the claimant to report to the hospital for physical reexamination and item 2 of the organization's claim is without foundation.

Item 3 of the Organization's claim states:

"That accordingly the Carrier be ordered to reinstate John F. Henry to service with all rights unimpaired under the controlling agreements and pay for all time lost."

This portion of the claim is the one that was enlarged and expanded upon on appeal. Such claim was not included in the initial presentation on the property. The carrier has taken and preserved the position that the claim has been procedurally defective since it was expanded and enlarged upon and for this reason alone, if for none other, the entire claim should be dismissed.

In conclusion, there were several extraneous subjects introduced into the record during the investigation which were apparently so much "window dressing." Investigation into such extraneous matter failed to develop any factual basis for them being made.

The record clearly establishes that claimant was suspected by his foreman of having something wrong with his back. The claimant was ordered to report to the Frisco Employees' Hospital for reexamination. The record is barren of any denial that something is wrong with the claimant's back. The record does show that claimant has not seen a doctor since 1942. Claimant's refusal to see a doctor, as ordered, lends strength to the opinion of the foreman.

Although claimant initially refused to obey instructions that were meet and proper, the carrier's superintendent communications and signals gave him a second chance to have a physical reexamination and again the claimant refused to do so.

In the light of all the facts and circumstances it is abundantly clear that the claimant's name was properly removed from the seniority roster and his record closed.

The board is requested to find in favor of the carrier and deny the employees' claim in its entirety.

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.

On March 12, 1963, Claimant was ordered to leave Everton not later than March 14th and report to the employes' St. Louis Hospital for a physical examination. He did not report there, but apparently regarded the order as a suspension from service, and on April 6th the General Chairman made written claim to the Superintendent—Communications that his seniority rights be protected and that he be returned to service with all rights unimpaired.

On April 15th the Superintendent in effect denied the claim by stating that Claimant had absented himself without leave. On May 1, 1963, the General Chairman appealed the denial to the General Superintendent, and on July 27th, as he had received no reply, he wrote to the Director, Labor Relations, (with copy to the General Superintendent), requesting that the allowance of the claim be given effect because of the General Superintendent's failure to disallow it within 60 days, as required by Article V of the August 21, 1954, Agreement, which now constitutes Rule 17 of the Rules.

Meantime, on April 29, 1963, Claimant was notified to report to the office of the General Foreman—Communications and Signals on May 6th for investigation of his alleged violation of Rules 183 and 189 in the Rules of Maintenance of Way and Structures, which require leaves of absence for absences of 60 days or more, and forbid employes to absent themselves from their duties without proper authority. The notice of hearing did not include a suspension. After a hearing he was discharged from service on May 28, 1963.

The record does not disclose the status of a claim concerning the discharge order of May 28th, if any; but in any event it was not, and could not have been, included in the claim of April 8th, and the Organization makes no argument concerning the merits of either the discharge or the alleged suspension, standing entirely on the cut-off rule.

On behalf of the Carrier it is argued that the claim as filed here is defective because it refers to the wrong section of Article V. It states "That the Carrier failed to comply with the procedural requirements of Article 5, Section 1(a) of the August 21, 1954 Agreement", which relates only to initial denials, and that further paragraphs relate to denials on appeals. As stated on the property, the reference was to Article V as a whole, but if considered as limited by the reference here to Section 1(a) the objection is without merit. For Section 1(c) of Article V provides: "The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals", etc. Consequently, the requirements of Section 1(a) are the requirements with which the Carrier had to comply, and as it failed to do so, the claim as originally made was automatically granted; and he must be considered to have been returned to service as of March 14, 1963, with all rights unimpaired, and he should be paid to May 28, 1963, the date of his discharge after a hearing.

AWARD

That Claimant be considered returned to service as of March 14, 1963, with all rights unimpaired, and that he be paid to and including May 28, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.