

Award No. 4693
Docket No. 4537
2-ACL-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That, under the controlling agreement Car Inspector W. H. Chaplin, Waycross, Georgia has been denied his contractual right to work since December 13, 1962.

(b) That accordingly the Atlantic Coast Line Railroad Company be ordered to restore him to service with seniority, vacation rights and all other benefits accruing to him under the current agreement unimpaired, and pay for all time lost, at the applicable rate, since December 13, 1962.

EMPLOYEES STATEMENT OF FACTS: W. H. Chaplin, hereinafter referred to as the claimant was employed as a carman by the Atlantic Coast Line Railroad, hereinafter referred to as carrier, on October 26, 1954.

The claimant's left knee was injured while on duty on October 17, 1961, he was assigned as a car inspector on the Waycross Train Yard on the date in question. He was treated by the carrier's Doctors until July 19, 1962 at which time he was given a certificate of ability to work (form 38) by Dr. S. Victor.

The claimant was still experiencing pain in his knee and decided to consult his private physician before returning to work, he was advised that surgery would be required to correct the existing condition. An operation was performed on the claimant's knee August 14, 1962 by Dr. Thomas Beath, Richmond, Virginia. Upon recovery from the operation the claimant reported to Dr. Butterworth, the company doctor, on December 12, 1962 for examination. Dr. Butterworth made a report to Dr. Benjamin Rawles, Chief Surgeon, Atlantic Coast Line Railroad, in which he recommended that the claimant be held out of service.

The claimant felt that he was able to return to work and decided that he would go back to Dr. Beath for further examination Dr. Beath issued a detailed report on the claimant's condition on January 10, 1963 in which he stated that in his opinion claimant was able to return to work. After receiving Dr. Beath's report the claimant returned to his home in Waycross,

right, medical reports should be weighed on the basis of quality, not quantity.

(e) The claimant is no longer physically qualified to perform car inspector duties by virtue of his permanent disability.

The respondent carrier reserves the right, if and when it is furnished *ex parte* petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered herein.

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.

This case involves a claim of an injured employe whose claim for compensation for his injury resulted in a settlement as the result of which Claimant was paid \$15,000.00. Thereafter he applied for work, claimed he was fully recovered from his injury, and supported his fitness for work by a statement from his physician. The Carrier's chief surgeon examined Claimant found that he was not physically able to perform his duties, and the Carrier refused to put him back to work. There are other medical reports in the record which are also in conflict as to Claimant's physical ability to do his job.

In view of the conflict of the evidence in the instant case it is impossible to resolve the matter since it involves medical expertise not possessed by the Board. Insofar as the facts are similar the Board has spoken at length on the subject of conflicting medical opinion as to physical fitness in Award No. 4692.

AWARD

Claim dismissed in accordance with the above decision.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.