



Award No. 5620

Docket No. 5402

2-SP(PL)-EW-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician G. M. Semeniuk was unjustly treated when he was suspended from service on January 13, 1966 to May 26, 1966 for an alleged physical defect.

2. That accordingly, (a) the Carrier be ordered to compensate Electrician G. M. Semeniuk for all time lost from January 13, 1966 to May 26, 1966; (b) Carrier pay Southern Pacific Hospital contributions including dependents' hospital, surgical, medical and death benefit premiums under the Travelers Insurance Group Policy for all time Claimant was held out of service.

EMPLOYEES' STATEMENT OF FACTS: Electrician G. M. Semeniuk, hereinafter referred to as the Claimant, is assigned as an electrician under the supervision of Mr. F. R. Olds, Master Mechanic, Western Division, with headquarters at Oakland, California.

On January 3, 1966, under the instructions of Mr. F. R. Olds, Claimant submitted to physical examination at the Southern Pacific Memorial Hospital.

On January 13, 1966, Claimant, on reporting for duty on his regular assignment, was refused a time card and informed by his immediate supervisor that he was removed from service due to being physically unfit to continue in service.

On January 14, 1966, the Local Grievance Committee requested and was granted a conference with Mr. F. R. Olds wherein Mr. Olds advised he was acting under instructions of superior officers who were acting on advice of the Southern Pacific Hospital Department. Mr. Olds, during said conference, could not offer any explanation to the committee's inquiry relating to Claimant's alleged physical defect.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should be denied.

All data herein submitted have been presented to the duly authorized representative of the petitioner and were made a part of the particular question in dispute.

(Exhibits not reproduced.)

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.

There is much extraneous and irrelevant material in this record, most of which need not be here discussed. It will suffice to say, that claimant was held out of service from January 13, 1966 to May 26, 1966, on advice from the Chief Surgeon that claimant "... is physically unfit for further duty as an electrician. . . ." By letter dated June 1, 1966, the Chief Surgeon advised that claimant had procured a hearing aid and that his hearing had improved considerably. The Chief Surgeon further advised that claimant could be returned to service as an electrician, effective at once.

We do not question the Carrier's right to determine the fit and the unfit, and to exclude the latter from its employment. However, in this case, the claimant should have been told about his trouble and informed what he should do to effect correction. Subsequent events proved that if this had been done, the period of forced unemployment would not have been unnecessarily prolonged. Under these circumstances, we believe that responsibility therefor was about equally shared and we hold, that claimant should be compensated to the extent of 50% of wages lost and this will adequately satisfy the entire claim as it was presented to us.

AWARD

Claim sustained in conformity with these findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1969.

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