



Award Number 5943

Docket Number 5754

2-SP(PL)-MA- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Machinists)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Traveling Motor Car Mechanic Leamon G. Goode (hereinafter referred to as Claimant) was unjustly deprived of his service rights and compensation when he was improperly removed from service at close of shift March 8, 1968 for alleged impairment of vision; and as a result of such action has suffered loss of compensation and all other service rights and benefits from said date to December 2, 1968, the date he was restored to unrestricted service.
2. That accordingly the Carrier be ordered to compensate Claimant for all time lost from date of improper removal from service on March 8, 1968 to date of restoration to service on December 2, 1968.

EMPLOYEES' STATEMENT OF FACTS: The record establishes that claimant was first employed by the carrier as a Traveling Motor Car Mechanic on the former Rio Grande Division (now identified as the Tucson Division) on February 25, 1959, and had remained in continuous service of the carrier until improperly removed March 8, 1968.

Claimant performed the full duties of his occupation during this period of service. No question was raised by the carrier until March 8, 1968 with respect to claimant's physical or vision qualifications to perform his assigned duties.

Claimant was arbitrarily and improperly removed from service effective with close of shift March 8, 1968, without benefit of medical examination or medical justification because of a statement allegedly made by claimant to his supervisor on that date that he lacked sufficient vision to operate an oxygen-acetylene cutting torch or to operate the truck used on his work assignment.

No physical or vision examination was accorded claimant on or before March 8, 1968, to justify or support his removal from service that date, nor was he accorded a hearing of any description in accordance with applicable

trifocal lenses. This was far different than previous examinations and while it appears evident that claimant had obtained new glasses, it is also evident that a great improvement in his vision had taken place. Whether the condition which caused his difficulty has disappeared remains to be seen but the test of the coming summer heat will no doubt make that determination.

The carrier asserts that on the basis of competent medical advice it acted only as prudent management should act in withholding the claimant from service. The self-serving statements of claimant and his representatives, unsupported by any medical evidence, can hardly be considered of such import as to overturn the recommendations of the Chief Surgeon.

The carrier asserts that the claim in this docket is without basis or merit and respectfully requests that it be denied.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should 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 contends that he was improperly and arbitrarily removed from service on March 8, 1968 because of an alleged impairment of his vision.

The record shows that on March 14, 1968, after being examined by Carrier's doctor, Claimant was issued a return to duty certificate. The return to duty certificate was not honored by Carrier because Claimant had a negative medical history. Subsequent examinations were made, at Carrier's direction, during the ensuing months. Claimant was finally returned to service on December 2, 1968, and continues in Carrier's employ.

The negative medical history which was the basis for Claimant being held out of service was evidenced in eight exhibits which Carrier introduced into the record for the first time by way of its Submission. This is clearly not consistent with the requirements of Circular 1 and cannot therefore be considered as evidence.

Absent such evidence, the Board is constrained to find, on the basis of the evidence it is allowed to consider, that Carrier improperly held Claimant out of service. Claimant is entitled to be compensated for wage loss, if any, during the claim period.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June, 1970.