

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they held Carman Helper James Allen Litton out of service from October 12, 1972 to January 17, 1973.
2. That the Seaboard Coast Line Railroad Company be ordered to compensate James Allen Litton eight (8) hours each day, forty (40) hours each week at pro rata rate, health and welfare, vacation rights and all other benefits accruing to his position, beginning October 12, 1972 until restored to service.

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 was furloughed on October 3, 1956, and recalled to Carrier's service on October 9, 1972. He was required to take a physical examination before assignment and was disqualified on the basis of Carrier's Medical Department's findings that he "should not do heavy labor" because of a back condition.

The first medical report contesting these findings was received by Carrier on December 6, 1972, from Dr. Bright McConnell. Carrier submitted the back x-rays examined by Dr. McConnell to Dr. James Cranford for opinion and the latter reported favorably upon Claimant's physical condition in a letter of January 10, 1973. One week later on January 17, Claimant was permitted to begin work.

It is always a matter of concern when an employe is deprived of earnings through no fault of his own. However, it was not unreasonable for Carrier to have required a physical examination of an employe who had been furloughed for some 16 years. Nor is there any persuasive basis for Petitioner's contention that Carrier unduly delayed the matter during October and November 1972. It was incumbent upon Claimant, if he disagreed with the findings of Carrier's Medical Department, to present medical evidence in support of his own position. He did not do so until December 6, 1972.

In our judgment, Carrier should have moved more swiftly once it was aware of Dr. McConnell's findings to make certain that Claimant was not being unreasonably deprived of employment. So far as the record shows, a ten day period should have been ample time to clarify the matter and protect its own interests.

We accordingly will sustain the claim for the period from December 16, 1972, to January 16, 1973, inclusive.

A W A R D

Claim sustained to the extent indicated in the last sentence of the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of January, 1976.