

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company unjustly held Crane Operator J. H. Ross out of service, from June 9, 1975 and continuous, when he complied with past practice, i.e., submitting from his personal physician a medical release, but Carrier's Chief Medical Officer disqualified him for return to service thereby depriving Mr. J. H. Ross of his contractual rights as a Crane Operator at North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to join with the employees' and initiate a plan the two (2) physicians agree upon and appoint a neutral physician to examine Mr. J. H. Ross to determine whether or not he is physically able to return to work.

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 employees 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.

In Award No. 7646 this Board held this claim in abeyance pending receipt of further data described in the findings. This data has been provided to the Carrier's Medical Department and it shows the Claimant has had no significant improvement with his back difficulties since he was disqualified. The Claimant is no more able to return to work than he was when he was originally disqualified.

Our review of this record clearly demonstrates that both the Organization and the Carrier have done all they can for this individual, and it is regrettable that his physical condition will not permit him to work. However, this Board does not substitute its non-experienced opinion for the medical expertise of Carrier's and Claimant's physicians. We have no jurisdiction to order Carrier to create a job for Claimant, nor do we have jurisdiction to, in effect, create a job for Claimant in his own craft or another craft. In fact, if arguendo, such jurisdiction was assumable by this Board, it would be inconsistent with the clear legal facts that Carrier, and Carrier alone, is responsible for and liable for maintaining a safe workplace and shielding physically unfit employees from positions which, in Carrier's judgment, would jeopardize the employees' health and safety.

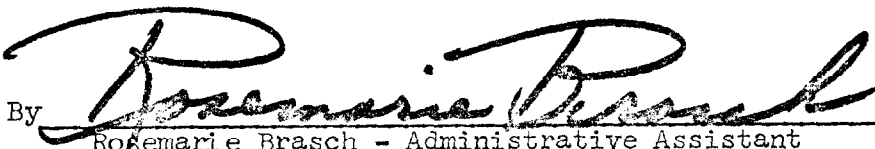
Under the Railway Labor Act, our jurisdiction is limited to adjusting disputes growing out of existing agreements, and, in Claimant's case, consistent with the agreement and previous decisions of this Board, we have no other jurisdiction or authority than to hold that as long as Claimant, in the normal exercise of his seniority, is unable to hold a position, which, in Carrier's Chief Surgeon's opinion, meets Carrier's minimum physical standards, he must remain disqualified. We do however, admonish the parties to continue their search for other suitable employment for Claimant.

A W A R D

Claim disposed of as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of April, 1979.