

The Second Division consisted of the regular members and in addition Referee James F. Searce 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 Employees:

1. That the Missouri Pacific Railroad Company violated Rule 18 of the June 1, 1960 controlling agreement on February 25, 1976 and continuous when they refused to apply the rule to Traveling Electrician J. R. Jameson at Deville, Louisiana.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Traveling Electrician J. R. Jameson eight hours (8') at the straight time rate for February 25, 1976 and continuous for each day thereafter until the violation is corrected.
3. In addition to the money amounts claimed herein the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 our Award No. 7676, which considered the medical disqualification of Claimant, we directed the parties:

"We return this matter to the property for a reassessment of the status of the Claimant's condition, the review of possible duties and encouragement for the parties to reach an agreement in the ninety (90) day period commencing with the execution of this AWARD; otherwise, the case is to be returned to this Board for further consideration and final action."



Claimant's physician, Dr. R. J. Beurlet, Jr., re-examined him in light of our Award, and, by letter dated October 5, 1978, reported to the General Chairman:

"The above patient was reevaluated on September 26, 1978.

The history and physical findings are unchanged since his examination of May 2, 1977.

He still would have difficulty with driving, climbing poles, ladders, bending, stooping or heavy lifting."

By letter dated November 2, 1978, Carrier's Director of Labor Relations wrote the General Chairman:

"As you were advised during your telephone conversations with Mr. Armstrong of this office on October 23 and November 1, 1978, the Personnel Department and the Engineer Department have been attempting to find a position for Mr. Jameson commensurate with his qualifications and his physical condition. So far the efforts to find a suitable job for him have been unsuccessful, but we are requesting the Personnel Department to keep Mr. Jameson in mind and continue their efforts to find a suitable position for him."

Based on the foregoing, Claimant has remained in the status of physically 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 and legal facts that Carrier, and Carrier alone, is responsible for and liable for maintaining a safe workplace and shielding physically unfit employees from position 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.



Form 1  
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Award No. 8020  
Docket No. 7490  
2-MP-EW-'79

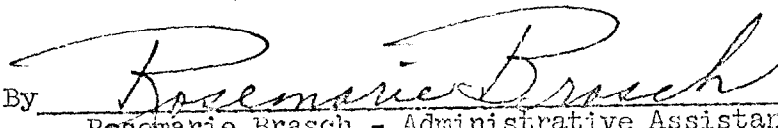
A W A R D

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 1st day of August, 1979.