

The Second Division consisted of the regular members and in addition Referee James F. Scarce when award was rendered.

Parties to Dispute: { System Federation No. 121, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company violated the rights of Carman L. L. Gonzales, Jr., Avondale, Louisiana, by withholding him from service since August 24, 1976, in violation of Rule 24 of the controlling agreement.
2. That accordingly, the Texas and Pacific Railway Company be ordered to compensate Carman Gonzales in the amount of eight hours (8') per day, five (5) days per week at straight time rate commencing August 24, 1976, and continuing until this dispute is settled; also other benefits that an active employe would receive.

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.

The facts bear out that the Claimant, with some five years of employment at the time of his being removed from service, was found to have impairment of hearing which placed him below the acceptable medical limits. Such a circumstance exposed both himself, other crew members to potential harm and the Carrier to potential liability. Notwithstanding the fact that his hearing was possibly in no more deteriorated status than at the time of his employment we cannot ignore the clear showing that, regardless of what happened prior to the point of discovery of his hearing impairment, the Claimant was a potential hazard to himself and others postfactum such discovery.

While we shall deny the claim herein, we encourage the Carrier to seek a job which will permit the Claimant gainful employment commensurate with his handicap, considering his five years of service. It is pointed out that while the argument can be made that the Claimant did have the opportunity to work for that period, he may well have foregone other employment alternatives during that same period in order to remain with the Carrier.

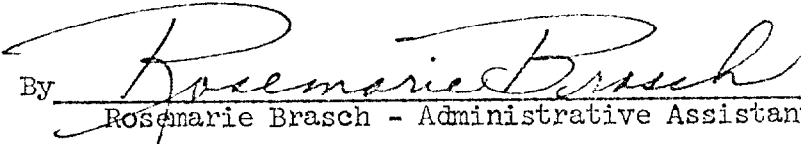
A W A R D

Claim is denied; the parties are referred to the Findings for further consideration.

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 8th day of August, 1979.