

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

Parties to Dispute: (Railway Employees' Department, A. F. of L. -
(C. I. O. (Carmen)
(
(Pacific Fruit Express Company

Dispute: Claim of Employees:

1. That the Pacific Fruit Express Company violated the controlling agreement when they ordered Mr. Amador Renteria, Laborer, to undergo a physical examination upon being recalled from furlough effective June 30, 1977 and refusing to allow him to return to employment as the result of the physical examination.
2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Laborer Renteria beginning June 30, 1977 until he is returned to service as follows:
 - a) Full seniority rights;
 - b) Full vacation rights;
 - c) Sick leave and all other benefits that are a condition of employment unimpaired;
 - d) Compensate him for all wages lost and lost time plus 6% annual interest rate;
 - e) Reimburse him for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of 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.

The essence of this Claim goes to the Carrier's right -- or proscription thereto, to require a physical examination for an employee being called back to work after a furlough. The Claimant's back was X-Rayed and the diagnoses thereof resulted in his being held unable to meet one of the work requirements -- lifting -- associated with the position to which he was being recalled. The Organization disputes the Carrier's right to require a fitness-for-duty examination, since it is not cited in the Agreement as a condition for returning to employment. Such argument by the Organization is simply without merit. The terms of a collective bargaining agreement do not establish an employer's rights, they limit them. After an extended absence from work, as was the case with the Claimant (September, 1974 to July, 1977), the Carrier does not need a provision of the Agreement to authorize it to determine the fitness of the Claimant to perform the duties assigned. Doing so protects not only the Carrier's interest, but the Claimant's as well.

We note, however, the relatively long service of the Claimant, and while we affirm the Carrier's authority to establish and hold employees to reasonable physical requirements, we observe that the only limitation to his return to work was the lifting requirement. This being the case, we assume this would not preclude consideration of the Claimant for any other position for which his physical condition and seniority will permit.

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 Braseh
Rosemarie Braseh - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of June, 1980.