

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Laborer-Hostler G. A. Harrison was removed from the service of the Elgin, Joliet and Eastern Railway Company on December 1, 1980 without just cause and that the Carrier violated the controlling Agreement by not providing an investigation.
2. That accordingly, the Elgin, Joliet and Eastern Railway Company be ordered to return Laborer-Hostler G. A. Harrison to work, immediately, with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all lost time from March 27, 1981, plus 6% annual interest.

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.

Claimant, G. A. Harrison, a laborer-hostler, was dismissed from service effective December 1, 1980 for failure to pass the medical examination given at Carrier's medical facility at Gary, Indiana.

Claimant contends that he was entitled to a hearing under Article 31 Time Claims and Grievances.

Carrier's position is that the relevant provision is contained in Article 34 of the Agreement, Medical Disqualification Appeal Procedures.

Claimant, prior to a return from work after an extensive absence, was required to take a medical examination at the company's facility in Gary, Indiana. Claimant was given an eye examination by Carrier's physician. Claimant failed to pass the eye examination in that the company requires for a laborer-hostler a distant visual acuity correctible to at least 20/30 in one eye and 20/40 in the other. Claimant's right eye was the problem. Claimant's eye was the subject of several examinations. Chief Surgeon Rudman, for the Carrier, performed an

examination showing the right eye visual acuity of 20/70 without adequate correction. The Claimant was advised that he should obtain glasses to permit visual acuity in the right eye of at least 20/40 and then to report for another examination. Claimant's personal physician, Dr. J. H. Roig, wrote that Claimant's vision without glasses was OD 20/100 and OS 20/20. Dr. Roig noted amblyopia (reduced visual acuity) in the left eye and that glasses would not help him. Several days later, Dr. Roig corrected his report indicating that the amblyopia was in Claimant's right eye and that the problem of uncorrected vision beyond the permitted parameters would remain.

Thereafter, Chief Surgeon Rudman advised Claimant of the receipt of Claimant's physician's clarifying medical report indicating right eye distant acuity of 20/100 uncorrectable by glasses. Carrier's physician then advised Claimant that the requirement of 20/30 and 20/40 was a company requirement and that Claimant could not meet this requirement based upon Claimant's physician's report as well as the report of Carrier's physician and therefore, Claimant was medically below standards for the position.

At this point, the dispute widened to determine whether or not there was a different standard for a hostler than for laborer, but there is not. The second dispute was whether or not the controlling agreement is the Brotherhood of Firemen and Oilers agreement with Elgin, Joliet & Eastern Railway Company or the agreement of 1958 involving hostlers. The significance of the two (2) agreements is that practically identical language exists in both regarding medical disqualification for work.

We find the International Brotherhood of Firemen and Oilers and Elgin, Joliet and Eastern Railway Company agreement of 1977 to be the controlling document. In that document, the final provision for physical examination appeal procedure which applies to this case, reads as follows:

"If the two physicians (Carrier's physician and personal physician) agree that the man is disqualified in accordance with the Carrier's physical or mental standards, their decision shall be final."

In this situation, there is no dispute and there is no need for a hearing since the matter is really not one of discipline but medical disqualification. Therefore, Article 34 involving Medical Disqualification Appeal procedures rather than Article 31 involving time claim and grievances is the applicable provision. The relevant provisions of Article 34 are as follows:

"ARTICLE 34 - MEDICAL DISQUALIFICATION APPEAL PROCEDURES

In the event an employee is disqualified as a result of a physical and/or mental examination, he will be notified in writing of the reason for such disqualification. If he feels that such disqualification is not warranted, the following rules will apply:

(a) The employe involved shall within fifteen (15) days notify the office of the Carrier's Chief Surgeon or the office of the Chief Mechanical Officer of the name, address and telephone number of the physician of his choice who has current knowledge of his physical and/or mental condition. This notification shall be in writing with copy to the General Chairman.

Upon receipt of this notice the Carrier's Chief Surgeon or his representative and the employe's physician shall, as promptly as possible, confer, by telephone or otherwise as may be deemed appropriate, and compare their medical findings. If they deem it necessary, they will jointly reexamine the employe. If the medical findings of the employe's physician agree with those of the Carrier's physician, they will be accepted as final."

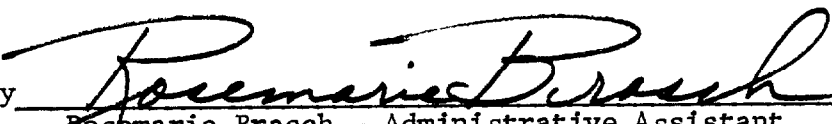
Since the two (2) physicians agreed, the matter is at an end. The Carrier is allowed to set medical restrictions for employes and there is no evidence that the medical restrictions were arbitrary, capricious, discriminatory or unfair toward the employe in any way, shape or form.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of May, 1983