Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9892
SECOND DIVISION Docket Number 9805
2-L&N-MA-'84

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1) That under the current agreement Machinist Apprentice R. W. Williams has been improperly withheld from service since February 10, 1981.

2) That accordingly the Carrier be ordered to restore Machinist Apprentice R. W. Williams to service with seniority unimpaired and compensated for all time lost retroactive to February 10, 1981.

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 employes 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 Claimant, R. W. Williams, is a Machinist Apprentice who established seniority with Carrier on August 10, 1977. On August 29, 1980, Claimant was involved in an off-duty motorcycle accident which resulted in serious injury, including skull fracture, facial fractures, and a loss of vision in his right eye. The Claimant, pronounced capable of returning to work by his physician, was scheduled for examination by Carrier's physician on January 16, 1981. On January 23, the Claimant was informed by an assistant shop foreman that he had been okayed to go back to work with a driving restriction and he had to wear safety glasses anytime he was on company property. He returned to work on the 24th and worked until, February 10, 1981, when he was advised that Dr. Mead, Carrier's Chief Medical Officer, had disqualified him from service because of the loss of vision in his right eye.

The Organization does not dispute the Carrier's right to establish minimum medical standards. It does, however, contend such standards should be administered even handedly across the board and not in a discriminatory or retroactive fashion. The Organization argues the record establishes the Carrier's chief medical officer was aware of the Claimant's visual impairment when he approved Claimant's return to duty based upon Carrier's Dr. Rutledge's examination of Claimant on January 16, 1981. The Organization asserts the Carrier's

position that Carrier's chief medical officer, at the time of reinstatement, did not know that the Claimant had lost total vision in his right eye is untenable. It is the Organization's opinion the Carrier has discriminated against the Claimant and treated him differently from other employes with like impairment. Furthermore, the Organization also avers Claimant's removal was a violation of Rule 34, Discipline.

The Carrier asserts the Claimant has not been disciplined nor has his seniority been terminated. According to the Carrier, the prerogative and responsibility to establish minimum, medical, safety standards is reserved to the Carrier. Herein, Carrier argues no dispute exists over Claimant's physical impairment. The requirement that employes, who have lost total sight in one eye, will not be approved for service in or around moving machinery or locomotives is reasonable and necessary considering the nature of the railroad business.

Initially, this Board's review of this case supports two basic views of the Carrier: (1) the Claimant was not disciplined, and (2) the Carrier has the right and responsibility to establish minimum medical, safety standards. With respect to this latter principle, we held in similar circumstances in Second Division Award 7134:

> "Obviously, a Carrier may not unilaterally adopt arbitrary standards of medical conditions."

We also reviewed Second Division Award 7364, where this Board examined the reasonableness of the Carrier's actions and, First Division Award 17154, where the absence of any evidence of bad faith or abuse was a key element.

Balancing the right of the Carrier to establish minimum medical standards with its actions herein, we express concern over the characterizations advanced by the Carrier concerning the role its Chief Medical Officer played in the Claimant's return to duty on January 24, 1981. No dispute exists over the Claimant's loss of vision in one eye. He was examined by Carrier Physician Rutledge on January 16. The record shows that a Med-2 from Dr. Rutledge was received on January 23, by Dr. Mead's office. Dr. Mead, by letter of June 5, 1981, stated, however, he was not aware of Claimant's loss of vision in his right eye "when the return to work was authorized, <u>inadvertently</u>, on January 23, 1981." (Emphasis added.) Conversely, an uncontested statement by Mr. M. R. Grigsby, an Assistant Department Foreman, stated in part:

> "When I arrived for duty on 1-23-81 there was a message for me to call Jacksonville. I made the call and the secretary for the Chief Medical officer answered the call. If I am not mistaken her name was Joanne Mills. She was the one who had called Hazard Shops requesting that I call her on my arrival. It was concerning Mr. Williams. She told me that we could put Mr. Williams back to work immediately. She also told me that he would be restricted from the use of any company vehicle and that he would have to wear safety glasses anytime he was on company property. We discussed his condition further about how he would have to be more cautious since he had lost the sight of one of his eyes."

From this account, it is clear the Chief Medical Officer's Jacksonville office demonstrated that, on January 23, it was well aware of Claimant's loss of vision. As established in the record, we know this information was not given that office by Claimant's physician, Dr. Rich; rather, the information came from Carrier's Dr. Rutledge. The record does not support Carrier's assertion that Carrier's actions of January 23, were "inadvertent." The record reveals the medical information subsequently claimed to have prompted Dr. Mead to disqualify the Claimant from service was in the Jacksonville office by January 23, 1981. Thus, by a process of logical elimination, the reporting of the loss of vision could only have been picked up after Dr. Rutledge's report had been read at the Chief Medical Officer's Jacksonville office.

In its on-the-property handling of this case, the Organization asserted the Carrier's current Mechanical Department Safety Rule Book dated January 1, 1978, states, in part:

> "Every employee who is blind in one eye must wear prescribed eye protection at all times while on Company premises regardless of whether on or off duty."

The existence of these rules and the Organization's assertions relating to them have not been addressed by Carrier. In the absence of any proof to the contrary, this Board must accept their existence, at least up until January 23, 1981. When the above quoted rule is taken together with the Claimant's return to duty restriction that he not be permitted to drive a Company vehicle and must wear safety glasses at all times, we conclude that the subsequent recision of his authorization to return to work resulted from a change in Carrier's position on its minimal safety standards. The facts do not support the assertion the recision resulted from the facts coming to light after January 23. To impose a restriction on January 23 and, at one and the same time deny knowledge of the impairment, defies logic.

We conclude the evidence herein supports the Organization's claim that the Carrier improperly withheld Claimant from its service. The Claimant shall be reinstated to Carrier's service with his seniority unimpaired and compensated for his wage loss, if any. Claimant should clearly understand he must pass a physical examination before he can be returned to service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984

NATIONAL RAILROAD ADJUSTMENT BOARD Serial No. 102
SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 9892

DOCKET NO. 9805

NAME OF ORGANIZATION: International Association of Machinists and Aerospace Workers

NAME OF CARRIER: Louisville and Nashville Railroad Company

The Organization has submitted four questions relating to Award No. 9892. It contends that on June 5, 1984, the Carrier's Chief Medical Officer wrote to the Claimant advising him his previous medical disqualification could not be rescinded because his physical findings remain unchanged. The Organization argues this disqualification was for exactly the same reason the Claimant was disqualified from service on February 10, 1981. The Organization seeks further compensation for the Claimant based upon this disqualification. It also seeks lost overtime for the period beginning February 10, 1981, until the Claimant is reinstated in accordance with Award 9892.

The Carrier informs the Board the Claimant has been medically qualified and has gone to work as an apprentice at Corbin, Kentucky, since June 5, 1984, establishing a new seniority date at that location. When and if an apprentice position becomes available at Hazard, Kentucky, the Carrier states the Claimant may exercise his seniority to this point of his original seniority.

This Board has considered the above positions and finds the disqualification of June 5, 1984, was for the same reason rejected in Award 9892. If the Claimant's seniority entitled him to a position as of June 5, 1984, he is entitled to be compensated for lost wages at the straight time pro rata rate. Clearly, we find no merit to the claim for overtime in either Award 9892 or in this Interpretation.

Referee Robert W. McAllister sat with the Division as a Member when Award No. 9892 was rendered, and also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1986.