

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company denied Electrician Donnell Williams the provisions of Rule 1, Section 2, paragraph (a) of the June 1, 1960 controlling agreement when required to report for a physical on his rest day May 21, 1982, and, violated Rule 32 (a) of the same agreement when the Carrier arbitrarily suspended Electrician Williams from service at North Little Rock, Arkansas commencing May 26, 1982.
2. That, accordingly, the Carrier be ordered to compensate Electrician Donnell Williams eight (8) hours at time and one-half for his rest day, May 21, 1982; and, eight (8) hours at the straight time rate for each day of his assignment commencing with May 29, 1982 and continuous until returned to 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 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.

On May 21, 1982, a complete physical examination of Claimant was performed by the Carrier's medical officer at the request of its master mechanic. The Carrier contends that Claimant was observed to have difficulty in performing his assigned tasks as an Electrician, including inspection of traction motors and passing through engine cab doors. Claimant also manifested difficulty breathing after climbing a ladder to inspect cooling fans. On May 26, 1982, Claimant was notified that he was being withheld from service upon advice of the Carrier's Chief Medical Officer until he reached a physical weight of three hundred (300) pounds or less.

The Organization alleges that the Carrier improperly withheld Claimant from service, without benefit of the procedure available pursuant to Rule 32(a) of the controlling agreement governing discipline and investigation. Carrier submits that it properly disqualified Claimant from service based on his weight, and a requirement that Claimant reduce his weight from 335 to 300 pounds was in fact reasonable, if not lenient. Further, the Carrier posits in support of its position the height-weight standards for new employees. These standards would only allow a man of Claimant's height (5'11") to weigh a maximum of 215 pounds.

Upon consideration of the entire record, we conclude that Carrier's assessment of physical disqualification until Claimant lost 35 pounds to be reasonable and proper. While this Board may properly construe the collective bargaining agreement as justifying a contractual guarantee that Claimant is entitled to priority in service according to his seniority as long as he is physically qualified, Gunther v. San Diego & Arizona Eastern Ry. Co., 382 U.S. 257, 86 S. Ct. 368, 371 (1965), the record reveals no contractual support to justify reliance by the Organization on Rule 32(a) or Rule 1. The Organization has cited no prior Board awards, contract language, or judicial decisions in support of its position that the action of the Carrier falls within the ambit of Rule 32(a).

Carrier's duty to those engaged in the operation of the railroad and to its patrons, to employ only those who are fit for service, provides no exemption for Claimant. The Carrier had the Claimant properly examined by its Chief Medical Officer when objective symptoms of Claimant's medical condition were observed by Carrier employees. This Board is not to act sua sponte and substitute its judgment for that of the Carrier, in particular where that judgment is not shown to have been exercised in an arbitrary or capricious manner, in bad faith or in contravention of the terms of the collective bargaining agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.