

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Grand Trunk Western Railroad Co.

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated Rule 18 and 31 of the Controlling Agreement, when they denied Carman, Rosco Smith the right to return to work, due to injury sustained while in the service of the Carrier.
2. That accordingly, Grand Trunk Western Railroad company be ordered to restore Carman, Rosco Smith to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all time lost from December 27, 1981 plus reimbursement (sic) for all losses sustained account of loss of coverage under Health and Welfare and Life Insurance Agreements during 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 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, Rosco Smith, was injured while on duty on February 6, 1978. The tip of his fourth finger was amputated in an accident while on a wrecking crew assignment. As a result of this injury, Claimant was assigned to light duty work when it was available. For approximately two years, the Claimant continued to be assigned light duty work. However, in mid-1980, due to a decline in business, which is still ongoing, the Carrier had a reduction in force which necessitated the eventual furlough of the Claimant.

Despite this decline in business, the Carrier continued to employ the Claimant on a light duty assignment for ninety (90) days from July 7, 1980.

After this period, the Claimant was again examined by the Carrier Chief Medical Officer, Dr. V. J. Gallant, whose report concluded that the Claimant's condition had not improved since the accident. Additionally, the Claimant complained of extreme pain when his injured finger was exposed to cold weather.

Finally, on November 7, 1980, the Carrier laid the Claimant off because of the Chief Medical Officer's report and because there would be no further work that could be considered light duty. The Carrier, in a letter from the Car Foreman to the Claimant, stated, "Due to you not being able to work the light duty we have available for you because of the cold weather allegedly causing you to experience pain in your finger, there is no alternative other than to lay you off".

The record reveals that the Claimant's condition has not changed since his furlough and that he has refused further surgical procedures to alleviate the pain in his finger.

The Organization contends that the Carrier has violated the following portion of their Agreement:

"Rule 18, Faithful Service;
Employees covered by this agreement who by reason of long and faithful service in the employ of the Company, shall be given such light work as they are competent to handle, when vacancies occur."

The Carrier takes the position that there are no light duty positions available and that there are not enough light duty tasks to justify the creation of a restricted position in the Carrier's craft at its Detroit repair facilities.

Our review of this record indicates that the Carrier has made several attempts to continue Claimant's employment after the accident injuring his finger. It is also clear that the Organization has acknowledged the limitations on the Claimant's ability to work, specifically his inability to perform work for a prolonged period of time in cold weather.

It is regrettable that the Carrier did not have sufficient light duty work to keep the Claimant employed. However, it is well established that this Board does not have jurisdiction to order the Carrier to create a job for the Claimant. It is the Carrier's responsibility to maintain a safe work place and to protect physically unfit employees from assignments which could endanger their health and safety. See Second Division Award 8020.

By the Organization's own admission, the Claimant is limited in his range of performance of Carrier's work because of his sensitivity to cold weather and the resulting pain he experiences when exposed. The Carrier has fulfilled its obligation under Rule 18; it has provided light duty work for the Claimant when work was available. Unfortunately, due to reductions in the work force, a decrease in freight traffic and the resulting reduction in repair work on freight cars, the Carrier is no longer able to offer light duty work to the Claimant.

The record demonstrates that the Carrier has complied with the letter and spirit of Rule 18. Therefore, no violation has occurred. Nevertheless, this Board encourages the parties to continue their efforts to find suitable alternative work for this Claimant.

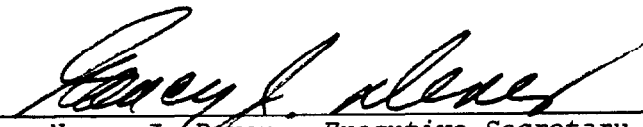
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Award No. 10255
Docket No. 9919
2-GTW-CM-'85

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 6th day of February 1985.