

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12347
Docket No. 12041
92-2-90-2-251

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

1. That the Elgin, Joliet & Eastern Railway Company violated the current working Agreement when they disqualified Carman B. G. Powell as Mobile Crane Operator effective at 7:00 a.m., Tuesday, June 20, 1989.

2. That the Elgin, Joliet & Eastern Railway Company be ordered to compensate Carman B. G. Powell (hereinafter referred to as Claimant), who was available, qualified and willing to perform the work of his regular assignment prior to June 30, 1989 as Mobile Crane Operator, as required by Rule 50, 79, 97 and 103 of the current working Agreement.

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.

Effective July 21, 1988, truck drivers employed by the Nation's rail carriers were subjected to Commercial Driver Testing and Licensing Standards promulgated by the Department of Transportation, Federal Highway Administration. (An attempt was made to exempt some drivers, but this was not successful.) Under these regulations Claimant was required to pass a medical examination in order to be eligible to continue to operate a mobile crane. On June 2, 1989, Claimant was examined by a Carrier doctor and the results of this examination were forwarded to Carrier's Medical Director. Upon receipt of the results of the examination, the Medical Director notified Claimant's supervisor by telephone that he had failed the Federal physical qualification test because of a hearing loss. Claimant was immediately disqualified as a Mobile Crane Operator and displaced onto a Carman assignment at the Gary, Indiana Repair Track. Claimant worked several days, took fifteen days vacation and a personal day, marked off work for an extended period of time and then several months later, retired on a disability pension.

The Organization contends that under Rule 103 of the Agreement, Claimant was improperly notified of his disqualification. It argues that he should have been given written notice before the disqualification could be placed into effect. Carrier did not do so until nine days after Claimant was verbally advised of the disqualification; accordingly, he is entitled to compensation equaling the difference between the Mobile Crane Operator's rate and the Carman's rate, a total of \$25.50 for the nine day period. The Organization states in its Submission that "... Claimant was ... qualified and willing to perform his regular duty ... as Mobile Crane Operator, but was not able [to do so] by ... Carrier's own fault."

The Organization takes the position that until Claimant received notice of medical disqualification in writing under Rule 103, he was qualified to operate the mobile crane. This approach is just backwards. After the regulations were changed in 1988 (and upon failure of the Nation's carriers to secure an exception for its employees) operators of highway equipment were not qualified until such time as they passed the necessary medical examination and possessed a valid medical certificate. With regard to the inference that Claimant could not be removed from the Mobile Crane Operator position until after he received notice under Rule 103, the Board notes that the Rule does not specifically require notice in writing before being taken off the job, only that he be told, in writing, the reasons for the disqualification. While the notice must be timely, so that if it is disputed it may be handled promptly, it is not required prior to removal from the job.


The Claim is without merit.

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 10th day of June 1992.