

**Award No. 15367**

**Docket No. MW-16071**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Edward A. Lynch, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) Mr. T. M. Phillips is and has been improperly withheld from service in violation of the Agreement since March 1, 1965.

(2) Mr. T. M. Phillips be restored to his former position, with seniority, vacation and all other rights unimpaired and be paid for all monetary loss suffered while improperly out of service.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to January 1, 1965, the claimant was regularly employed as a district gang foreman at Blytheville, Arkansas. He entered the Carrier's service on July 1, 1917, has an excellent employment record and time lost due to illness has been minimal.

In January, 1964, the claimant was examined by Dr. Boldizar, consulting surgeon for eye patients of the Frisco Hospital Association at St. Louis, Missouri. That examination revealed that cataracts partially obstructed the vision of his right eye. Dr. Boldizar suggested that the claimant return in about a year for re-examination. The claimant arranged to be re-examined during his scheduled vacation period in January, 1965. Dr. Boldizar found that cataracts partially obstructed the claimant's vision in both eyes and suggested that the claimant enter the Frisco Hospital at St. Louis for corrective surgery on his right eye. The claimant preferred to have the operation performed nearer his home. Consequently, he arranged to have the cataracts removed by Dr. J. E. Wilson. Dr. J. E. Wilson is the Carrier's physician at Memphis, Tennessee and is an ophthalmologist. The operation was successfully performed on January 13, 1965. The claimant was subsequently advised by Dr. Wilson that he would be ready to return to active service as a district gang foreman on March 1, 1965, after he had been fitted with contact lenses. Dr. Wilson suggested that the claimant again have his eyes examined by Dr. Boldizar before incurring the expense of purchasing contact lenses.

The claimant entered the Frisco Hospital at St. Louis and was re-examined by Dr. Boldizar on February 12, 1965. Dr. Boldizar's examination confirmed the findings of Dr. Wilson, i.e., that the claimant's vision qualified him to perform the duties of a district gang foreman after he was fitted with contact lenses.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** The claimant, whose date of birth is February 9, 1901, entered service of this Carrier as section laborer July 1, 1917 and was promoted to section foreman July 28, 1922.

The claimant, on recommendation of the Carrier's medical staff, has been on continuous leave of absence account physical disability since January 30, 1965. Current leave of absence does not expire until July 23, 1966. The claimant not only has impaired or defective vision in both eyes caused by cataracts, but also the Carrier's medical staff has diagnosed the claimant as having Arteriosclerotic Heart Disease with definite progressive changes.

**OPINION OF BOARD:** We will here follow the long line of Third Division Awards that through the years have held that a Carrier has the right to determine the physical fitness of its employees; and in so doing has the right, if not an obligation, to accept the recommendations of its chief medical officer in such matters.

Carrier did so in the case before us and there is no evidence of any arbitrary action in the exercise of such right.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### **AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of THIRD DIVISION

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1967.