

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) The Carrier treated Mr. T. O. McCoy in an arbitrary and unfair manner by demoting him from Signal Maintainer to Signal Helper.

(b) Mr. T. O. McCoy be allowed the difference between what he earns and the Signal Maintainer's rate he received prior to demotion, for each working day commencing February 24, 1964, and continuing as long as his demotion exists.

EMPLOYES' STATEMENT OF FACTS: This is a case of Carrier having literally added insult to injury.

Claimant McCoy was injured on duty in 1956 to the extent that his ability to climb was restricted. Since the accident, he has worked as helper, assistant and signalman, having been promoted to Assistant Signalman July 10, 1957 and Signalman April 25, 1961. However, on February 24, 1964, Carrier demoted him from signal maintainer to signal helper, allegedly because he could not climb poles due to his physical condition.

As shown by our Statement of Claim, we contend Carrier should be required to compensate Mr. McCoy at the signal maintainer rate of pay since his demotion; i.e., the difference between what he earns and the signal maintainer rate.

Under date of February 14, 1964, Carrier's Signal Supervisor asked Dr. P. G. Holsinger to determine Mr. McCoy's physical qualifications to hold position performing pole line work. Under date of February 19, 1964, Doctor Holsinger advised the Signal Supervisor that it is the feeling of the Medical Department that Mr. McCoy cannot be considered safe to climb poles due to his present physical condition. Then, on February 20, 1964, the Supervisor advised Mr. McCoy that he would be reduced to signal helper effective February 24, 1964, account physical disability.

have or may or can hereafter have against said railroad company * * * arising out of personal injuries sustained by me while employed by said The Baltimore and Ohio Railroad Company at or near Niles Junction, Ohio, on or about December 21, 1956, or at any other place or time prior to the date hereof, and for all losses, damages and expenses incident thereto, and in consideration of the receipt by me of said sum I do hereby release and forever discharge the said Company from all said claims or demands." The claimant resumed service on April 15, 1957. Following his accident, the indications were that there would be no permanent disability in connection with his injury. After his return to duty in April, 1957, Mr. McCoy's performance appeared to be satisfactory, and it appeared his injury had no detrimental effect. He was subsequently promoted to Assistant Signal Maintainer, a training class for the position of Signal Maintainer. His performance in the Assistant class was evidently satisfactory, but knowledge as to his inability to climb poles did not come to the attention of the supervision. When he was promoted to the Maintainer's class, the claimant's inability to climb was likewise not immediately perceived. In fact, observation that the claimant could not perform this function did not come to light until the Signal Supervisor requested him to climb in the performance of his work in 1963. At that time the claimant said he could not perform this function and laid off duty from June 14, 1963 until January 2, 1964. Upon reporting for duty he was sent to the Medical Department for examination. As a result of that examination, he was disqualified as a Signal Maintainer on a showing that it would be unsafe for him to climb poles. The claimant resumed as a signal helper in a position that did not require pole climbing.

OPINION OF BOARD: Claimant was injured on duty in 1956. After the accident he worked successively as a Signal Helper; was promoted to Assistant Signaller July 10, 1957 and to Signal Maintainer on April 25, 1961.

In 1963, the Signal Supervisor requested Claimant to climb a pole in performance of the duties of a Signal Maintainer. Claimant said he could not perform that duty, and he laid off from June 14, 1963 until January 2, 1964. Upon reporting for duty he was sent to the Medical Department for examination. On February 19, 1964, that Department found Claimant physically incapacitated to climb poles. On February 20, 1964, the Signal Supervisor informed Claimant that he would be reduced to Signal Helper effective February 20, 1964.

It is not disputed that the duties of a Signal Maintainer require the climbing of poles.

The theory of Petitioner's case is that Claimant's physical incapacitation flowed from his 1956 injury; consequently, Carrier owed him some consideration over and above the monetary settlement of damages due to the injury for which Claimant in turn executed a general release.

We find that Claimant at the time of his demotion stood in no better position than any other employe and the Carrier acted in compliance with Rule 42 of the Agreement, which reads:

"INCAPACITATED EMPLOYEES

Employees who have given long and faithful service in the employ of the Company and have become unable to handle heavy work to advantage, will be given preference of such light work in their line as they are able to handle."

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.