

**Award No. 11909**

**Docket No. MW-12302**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, without just and sufficient cause and without benefit of hearing, it dismissed Track Foreman W. H. Turner from service beginning with the close of work on November 20, 1959.

(2) Mr. W. H. Turner be reinstated to his former position with seniority and other rights unimpaired and that he be compensated in the amount he would have earned had he continued in service, less the amount that he has received in other work or through unemployment compensation, all in accordance with the provisions of Rule 6 of Article 22.

**EMPLOYES' STATEMENT OF FACTS:** The facts involved in this dispute were fully and clearly set forth in the letter of claim presentation wherein the undersigned General Chairman included the following quoted factual information:

"Statement of Facts: On November 5, 1959, Mr. W. H. Turner was required to, by his superior officer, appear before a Dr. Grant, a general practitioner at Austin, Texas, for a physical examination. Dr. Grant personally gave Mr. Turner a physical examination with the exception of the eye examination. The examination of Mr. Turner's eyes was conducted by a Receptionist or Nurses Aid. After the physical examination was completed Dr. Grant forwarded the examination papers to Chief Surgeon of the M-K-T Railroad, Dr. R. S. Kieffer at St. Louis, Missouri, and without personally examining Mr. Turner Dr. R. S. Kieffer made a report to some officer of the carrier which resulted in the following letter being received by Mr. Turner, dated November 19, 1959:

**OPINION OF BOARD:** On November 19, 1959, Carrier advised Claimant in writing that as a result of a physical examination conducted on November 5, he was found not physically qualified to perform the duties of Section Foreman by reason of defective vision and that consequently he was removed from service.

The minimum visual requirements for service as a Section Foreman on this property are: 20/50 in one eye and 20/30 in the other, with or without glasses. The record shows that examinations of Claimant during progress of this claim on the property by two doctors of his own choice and one agreed upon by the parties as "disinterested" resulted in medical findings that Claimant's vision (corrected) did not meet these minimum requirements.

These facts establish that the sole reason for removing Claimant from further service as a Section Foreman was that he was unable to meet the minimum visual requirements uniformly applied as a test of physical fitness for service in such position on this property. It is abundantly clear that this Board has no power to set aside these findings by competent and disinterested physicians, nor may we with propriety set aside or modify uniform and nondiscriminatory standards of physical fitness applied by a Carrier to its employees in ascertaining their physical or mental qualifications for service in a particular craft or class of employment.

Thus, the sole issue here presented is whether, as asserted, Claimant's rights under the disciplinary rule of the Agreement (Article 22, Rule 1) were violated by Carrier when it removed Claimant from service without first giving him a fair and impartial hearing.

The Employees' reliance on the disciplinary rule under the facts of this particular case is misplaced. Claimant was not subjected to discipline nor was he "dismissed" as that word is used in Rule 1 of Article 22. Claimant was not charged with an offense under which he might have been dismissed or discharged from the Carrier's service. He was withheld from further service solely because of failure to meet the physical requirements of the job but with his seniority and other rights under the Agreement unimpaired. The employer-employee relationship here was not severed. Claimant would, therefore, be entitled under the Agreement to reassert his right to return to service as a Section Foreman at any time he can show his ability to meet the minimum and uniform physical requirements appertaining thereto.

In view of the foregoing, this Board finds no violation of Claimant's rights under Article 22; nor can it be held that Carrier's action in withholding Claimant from further service based upon competent and disinterested medical findings was arbitrary or unreasonable. (See Awards 5908, 7204, 8186, 10631).

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 21st day of November 1963.