

Award No. 14850
Docket No. CL-15526

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5770) that:

(a) The Southern Pacific Company violated the Clerks' Agreement at Fresno, California, when it arbitrarily, without good and sufficient reason and solely for its own benefit, ordered Guaranteed Extra Board Clerk A. F. Dolenshak to the Southern Pacific Memorial Hospital; and,

(b) The Southern Pacific Company shall now be required to allow Mr. A. F. Dolenshak eight hours' additional compensation at pro rata rate of Bill Clerk Position No. 35 each date October 21, 22, 23, 24, 25, 28, 29, 30, 31, November 1, 4, 5, 6, 7, and 8, 1963; and eight hours' additional compensation at time and one-half rate of Bill Clerk Position No. 35 each date October 26, 27, November 2, 3, 10 and 11, 1963.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Mr. A. F. Dolenshak, hereinafter referred to as the Claimant, began working for Carrier on September 21, 1961, at Bakersfield, California, San Joaquin Division. When reporting for his physical examination he told Carrier's examining doctor that he had a history of Rheumatic Fever and heart damage resulting therefrom. The doctor informed him that he would have to refrain from doing any work which would cause excessive physical exertion

On February 3, 1965, petitioner's general chairman requested additional time to prosecute a claim to the Board under Article V, paragraph 1(c) of the Agreement of August 21, 1954. Extension to May 31, 1965 was agreed to and confirmed by letter of same date.

On April 9, 1965 claim was again discussed in conference, prior decision was affirmed and confirmed by letter April 12, 1965 (copy attached as Carrier's Exhibit F) from carrier's assistant general manager to petitioner's general chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: At the time of his pre-service medical examination, September 20, 1961, Claimant executed a waiver holding Carrier "blameless in all cases of illness or injury resulting directly or indirectly from the following disabilities of which I am present the subject, to wit: 'Any complications arising from Rheumatic Fever.'" Subsequently, while on the Guaranteed Extra Board at Fresno, California, the Agent called him to a one-day vacancy on a Mail and Baggage Handler position. Claimant says he did not know the nature of the duties required; and, he found the duties too much for him and had to ask other on-duty employees to handle heavy mail sacks while he performed light tasks.

On October 18, 1963, the Agent again called Claimant to work a Baggage and Mail Handler position. Then Claimant told the Agent that his physical condition would not permit him to handle such arduous duties. Thereupon the Agent ordered Claimant to report to Carrier's General Hospital for examination. Thereafter, Claimant, on the basis of the medical, was returned to service with restriction to sedentary work. The claim is for loss of wages from October 18, 1963, until Claimant was returned to service.

Petitioner contends that the September 20, 1961, waiver was an employment agreement to restrict Claimant to sedentary work which was only reaffirmed in 1963.

The waiver is the best evidence that no restrictions as to type of work were prescribed or imposed at the time of its execution. There is no evidence that the Agent had reason to believe there were any restrictions as to Claimant's services. Under the circumstances the Agent acted prudently and within Carrier's rights in ordering him to its Hospital for medical diagnosis as to his work capacity. We will deny the Claim.

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 the 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 14th day of October 1966.