

Award No. 18512
Docket No. SG-18994

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Charles E. Johnson for compensation for each day beginning February 1, 1970, and continuing until permitted to resume service as a signal foreman. (Carrier's File: B 225-564)

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of May 1, 1964, Rules 101, 400 and 700 of which read:

"RULE 101.

SIGNAL GANG OR SIGNAL SHOP FOREMAN

An employee who is assigned to a signal gang or signal shop and whose principal duties are to supervise and direct the work of other employees assigned under his supervision and who is not required to regularly perform any of the work over which he has supervision."

"RULE 400. SENIORITY

Seniority shall consist of rights based upon relative length of service of employees and may be exercised pursuant to the provisions of this Agreement."

"RULE 700.

DISCIPLINE AND INVESTIGATIONS

(a) An employee who has been in the service more than sixty (60) days shall not be disciplined or dismissed from service without first being given an investigation.

Mr. Johnson has not been disciplined or dismissed from service, but has only been suspended from service pending compliance with Dr. Rouse's instructions that he reduce his weight to approximately 200 lbs., which is essential for the proper performance of his duties as well as his own welfare.

Accordingly, Rule 700 referred to by you is not applicable, and there is no obligation resting upon the Carrier to hold an investigation as suggested by you.

In view of the fact that claimant does not meet Carrier's physical standards and has consistently failed to reduce his weight as instructed, he is not now qualified for return to service, and there is no basis for compensation beginning February 1, 1970, date suspended from service for the reasons set forth above.

Accordingly, claim in behalf of Mr. Johnson is hereby declined.

Yours truly,

/s/ O. B. Sayers"

14. The claim was considered in conference on July 15, which was confirmed by letter of July 24. Carrier's Exhibit E.

15. The claim was not composed on the property and the Carrier is in receipt of the Organization's notice of intent to file the dispute with your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was removed from active service by the Carrier on advice of its Chief Medical Officer due to Claimant's weight problem.

The Petitioner alleges a violation of Rule 700 — Discipline and Investigations. The disciplinary rule is not applicable in a case of this kind. Claimant was not subject to discipline nor was he dismissed or suspended from service as those words are used in Rule 700. He was not charged with an offense under which he might have been dismissed or suspended from Carrier's service. He was withheld from service simply because of failing to meet Carrier's physical requirements. (Award 11909)

This Board has held through the years that a Carrier has a right to determine the physical fitness of its employes, and has the right to accept the recommendation of its Chief Medical Officer in such matters. (Award 15367) We will, therefore, 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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.

DISSENT TO AWARD 18512, DOCKET SG-18994

The Majority in Award 18512 has committed palpable error in its disposition of the dispute.

There was no dispute concerning the Carrier's "right" to determine the physical fitness of its employes or to accept the recommendation of its Chief Medical Officer. These "issues" were nothing more than strawmen with which the Carrier jostled in order to divert attention from the controlling issue. We hold it to be axiomatic that a proper decision or award will address itself to the question or point on which the parties are not agreed. Such question and petition are just as axiomatically presented by the petitioner who initiates the proceeding, not the respondent whose only function is to make an answer or defense.

The Majority, in not addressing several vital points raised by the petitioning Brotherhood, is in error in its award, and I dissent.

W. W. Altus, Jr.
Labor Member