

Case No.  
Award No. 51  
System Docket No. 576

SPECIAL BOARD OF ADJUSTMENT NO. 310

The Order of Railroad Telegraphers  
and  
The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of The O.R.T. on the Penna Railroad that C. B. Wile, regularly assigned Block Operator at Custer, first trick, was and is being suspended from working his regular assignment at Custer effective May 28, 1958, in violation of Regulation 4-D-1 and 4-G-1.

Because of this violation, claim is made for a day's pay for each working day claimant is improperly held out of service and until such time he is restored to service at Custer. Claim also made for a day's pay account being required to report to Medical Examiner in Columbus on May 26, 1958 and expenses incurred in accordance with Regulations 4-D-1, 4-G-1, 4-O-1 (a) and 4-R-1." (Buckeye Region Case No. R-197 - System Docket No. 576.)

FINDINGS:

Organization asserts that Claimant is "a victim of a hideous scheme conjured by the Supervisory Operator after he realized he could not remove Mr. Wile from his position by any other method (because) xxx Mr. Wile had reported what he considered an unusual operating procedure to the ICC xxx."

Many decisions have emanated from the NRAB upholding Carrier's right to determine the physical fitness of its employees. Carrier, however, has no right to use such privilege in an arbitrary or capricious manner.

The employees' basic rights under such circumstances are fully protected by Regulation 8-E-1, which provides for an impartial determination of his physical fitness by expert physicians..

Because Organization has here failed to take advantage of such right, it cannot now ask that Carrier's decision be reversed.

AWARD:

Claim denied.

Signed this 10th day of April, 1961.

/s/ E. A. Lynch

E. A. Lynch, Chairman

/s/ C. E. Alexander

C. E. Alexander, Carrier Member

/s/ R. J. Woodman

R. J. Woodman, Employee Member  
DISSENTING