

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

(A) John M. Malden, who was employed as a janitor at Carrier's 63rd Street general office building, Chicago, Illinois, was improperly and illegally removed from the service, and

(B) That the Carrier be required to restore John M. Malden to service with all rights unimpaired, and that claimant Malden be fully reimbursed for all wage losses sustained, from November 16, 1955 to date he is restored to service.

OPINION: Carrier employed Malden in 1950 as a janitor at Carrier's 63rd Street General Office Building, Chicago, which included usual janitorial duties as well as lift and move heavy furniture.

At the time Claimant was hired, he was examined by a company doctor and passed the physical examination. On November 14, 1955, Claimant was informed by the Building Custodian that he need not report for work on the following day. The following day, Claimant received a notice from the Carrier advising him that he was disqualified for service and should apply for retirement annuity. Following receipt of the notice, Claimant was instructed by the Building Custodian to surrender his suburban train pass. It also appears that Claimant's name was removed from the seniority roster.

It is the position of Claimant that the Carrier violated Rule 24 of the agreement which provides that employees who have been in the service more than 60 days shall not be disciplined or dismissed without investigation, and that Claimant was summarily removed from the service illegally.

It is the position of the Carrier that from January, 1957, to January, 1958, Claimant was physically disqualified for service by competent medical authority and can return to active service whenever he can meet the required physical standards. Carrier also relies upon Illinois Central Railroad Operating Department Circular No. 18, Rule 4 of which provides:

"4. Examinations and re-examinations may be ordered at any time by proper authority for other than transportation department employees."

Rule 16 provides:

"16. Employees who have been disabled by reason of accident or disease which predisposes them to sudden incapacity, or whose sight, color sense or hearing may have thereby become affected, must pass a satisfactory examination before resuming duty. Employees who have been out of service for any cause to exceed six months will be required to pass a satisfactory examination before resuming duty."

It appears that an examination of Claimant conducted by Doctors Sloan and Avery and endorsed by the Carrier's Chief Surgeon determined that Claimant did not meet the minimum standards set up by Circular No. 18. In substance, the report says that Claimant is a hazard to himself and to others by reason of his impaired physical condition.

We also find that there is no evidence that Claimant is physically able to perform his regular and usual duties; moreover, there is evidence to the contrary.

Under such circumstances, Rule 24 has no application. We think Rule 16 applies.

Claimant may by virtue of Operating Circular No. 18 be returned to service when and if he can pass the required physical examination.

FINDINGS: The Special Board of Adjustment No. 170, after giving to 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the agreement was not violated.

AWARD: Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 170

/s/ Edward M. Sharpe

Edward M. Sharpe - Chairman

/s/ R. W. Copeland

R. W. Copeland - Employee Member

/s/ E. H. Hallmann

E. H. Hallmann - Carrier Member

Chicago, Illinois
October 29, 1958