

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:**RAILROAD YARDMASTERS OF AMERICA****THE BALTIMORE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that:—

Yardmaster J. F. Fleig, Rochester, New York be returned to service as Yardmaster and be compensated for all time lost at the appropriate Yardmaster rate beginning February 16, 1965 and until condition complained of is corrected account being removed from service in violation of Article 7, paragraph (a) of Controlling Agreement.

EMPLOYEES' STATEMENT OF FACTS: After completion of his tour of duty on February 15, 1965, Yardmaster J. F. Fleig was given a notice, over the typewritten signature of Superintendent R. E. Enderle, that immediately effective he was being held out of service until such time as the Medical Department permitted him to return to duty. Also that such determination would be made after a physical evaluation scheduled for February 23, 1965, by Dr. J. W. Knapp. Yardmaster Fleig has not been permitted to return to service nor has he ever been furnished with a report of the findings of the Carrier's Work Classification Unit.

CARRIER'S STATEMENT OF FACTS: This action is brought by the Railroad Yardmasters of America on behalf of Mr. J. F. Fleig, an employee in this Carrier's Transportation Department at Rochester, New York.

This dispute arises because of the inability of this Carrier from a medical standpoint to permit Mr. Fleig to resume duty in the capacity of the Yardmaster, the full details and circumstances of which will be related in considerable detail at a later point in this presentation.

The complaint in the present action asks that Mr. Fleig "****be returned to service as Yardmaster and be compensated for all time lost at the appropriate yardmaster rate beginning February 16, 1965, and until condition complained of is corrected account being removed from service in violation of Article 7, paragraph A of controlling Agreement.***"

OPINION OF BOARD: Claimant, a Yardmaster at Rochester, New York, has been held out of Carrier's service since February 16, 1965, on advice of its Medical Department.

This is not a discipline case involving a Rule G or other violation and is, therefore, not subject to the requirements of Rule 7(a). Rather does it concern an employe's failure to satisfy Carrier's physical standards.

The record demonstrates that Carrier has acted in good faith in this matter and has not been cavalier in its treatment of Claimant. The position of Yardmaster involves responsibilities important to the safety and efficiency of railroad operations, and it is not arbitrary for management to require yardmasters to satisfy physical standards that are, as in this case, reasonable. Carrier appears to have given Claimant all due consideration and, in an effort to protect his interests, a second chance following his removal from service in 1963. There is no indication that it, at any time, declined to discuss with the Organization the medical findings supporting its determination.

The claim will be denied. See Second Division Awards 481 and 1419, as well as Third Division Award 728.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1966.

DISSENT OF LABOR MEMBERS TO AWARD 2150 (DOCKET 2124)—

RYA vs B&O

The Claimant here involved possessed the necessary seniority to hold the yardmaster position from which he has been withheld without a showing of cause. The Carrier had the burden of justifying its action to the Employees in the handling of this dispute on the property.

The majority decision is based entirely on consideration of material improperly included in submissions to this Division, which, as we all know, is not permitted.

There was absolutely no basis for an award sustaining the position of the Carrier and we dissent vigorously.

LABOR MEMBERS

A. T. Otto, Jr.

J. P. Tahney

W. J. Ryan