

**Award 17154**

**Docket 32760**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

**39 South La Salle Street, Chicago 3, Illinois**

**With Referee Mortimer Stone**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**LEHIGH VALLEY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Request of Reginald G. Lush to be returned to the service as a yardman at Manchester Yard, dismissed December 1, 1953, account of injury sustained; also claiming one day's pay each date until such time he is reinstated. (Trainmen's Case No. T-54-23, L-616)."

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Claimant seeks return to service as yardman at Manchester Yard with pay for time lost from December 1, 1953.

As a result of service injury on February 16, 1953, his right foot was amputated. He brought suit against carrier alleging permanent injuries and compromise settlement was made and is evidenced by written release.

Claimant has not been dismissed, as asserted in his claim. He is still carried on the seniority roster and is kept out of service because of physical disability.

Carrier properly declined to agree to a joint physical examination to determine claimant's physical condition since it does not dispute his good condition except for the loss of his foot, so there is no disagreement as to his condition, and with that admitted limitation on his movements and balance, neither the medical practitioner nor this Division is qualified to determine whether he should be permitted to return to work.

It is not contended by the committee that he is physically qualified to perform the duties of a yardman, but that he can perform those of a switch-tender. It asserts without contradiction in the record that "we have disabled individuals who have lost an arm or a leg used in yard service as switchtenders at various terminals", but it does not assert employment of such persons at Manchester Yard. Carrier asserts, also without contradiction in the record, that the duties of a switchtender at Manchester Yard are not confined to a

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point or small area but require the crossing of tracks, running or walking on stone ballast, and moving around in quite extensive areas for the handling of switches; that claimant could not meet carrier's requirements, and that his employment would be a dangerous risk which the responsible officers of this carrier could not assume.

The setting up of standards of physical fitness is a responsibility of management and may not be challenged by us in the absence of evidence of bad faith or abuse. While it appears from the record that the financial settlement made with claimant was also a ground for carrier's denying reemployment to claimant, there is no convincing showing that the asserted ground of lack of physical fitness was not of itself sufficient and in good faith.

**AWARD:** Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of October, 1955.