

Award No. 2707
Docket No. 2503
2-PULL-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician H. F. Biggs was unjustly dealt with when he was not permitted to complete his bulletined hours when he reported for service on March 9, 1956.

2. That accordingly the Carrier be ordered to compensate Electrician H. F. Biggs in the amount of 8 hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Electrician H. F. Biggs, hereinafter referred to as the claimant, is employed as an Electrician at the St. Louis District. His regular bulletined hours on March 9, 1956 were 12:00 Midnight to 8:00 A.M.

On March 9 the claimant reported for service which was his regular assigned work day. Assistant Foreman Hardwick did not allow him to complete his bulletin hours.

Under date of March 20, 1956, our committee submitted a claim in favor of the claimant charging violation of Rule 27 of our agreement. A copy of said claim is submitted herewith and identified as Exhibit A.

Under date of April 19, 1956, a decision was rendered by Foreman F. J. Hellweg denying our claim. A copy of said decision is hereby submitted and identified as Exhibit B.

Under date of May 15, 1956, we appealed this decision. A copy of this appeal is hereby submitted and identified as Exhibit C.

Under date of June 14, 1956, Mr. Dodds denied our appeal. A copy of this denial is submitted herewith and identified as Exhibit D.

primarily charged with the safe and efficient operation of its business and that managerial rights are limited only to the extent they have been contracted away in the working agreement or are contrary to law. For example, in Third Division Award 6001 (Referee Carroll R. Daugherty), the Board stated:

"... we hold that a carrier is allowed to do anything not prescribed or limited by the agreement or by law." (See also Third Division Awards 2491, 5492, 5897, 6384, 7199 and 7200.)

In the instant case no provision of the working agreement supports the contentions of the organization to the effect that the company is limited in its right to safeguard the health of an employe who fails to furnish the company evidence that he has recovered from a physical ailment to the extent that he safely may work. On this point see Third Division Award 3302.

CONCLUSION

The facts as herein presented support the premise upon which the company rests its case. The company has shown that no rule in the agreement requires the company to act in the manner requested by the organization. Also, the company has shown that management has an obligation to protect an employe from possible aggravation of his physical condition and that the company would have been seriously remiss if it had permitted Biggs without any medical evidence as to his fitness to resume his work. Finally, the company has shown that awards of the various divisions of the National Railroad Adjustment Board support the company in this dispute.

The claim of the organization that the company should have permitted Electrician Biggs to complete his bulletined hours when he reported for work on March 9, 1956, and that he is entitled to an adjustment of 8:00 hours at the straight time rate of pay is without merit and should be denied.

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

The carrier or carriers and the employe or employes 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 the dispute were given due notice of hearing thereon.

At approximately 11:15 P. M. on March 7, 1956, the claimant telephoned Assistant Foreman Lamb and stated he was unable to report for work on that date because his back was hurting him. He was absent from his assignment on March 7 and March 8, 1956. At approximately 9:00 A. M. on March 9, 1956 the carrier attempted to contact the claimant at his home to inform him that it was necessary to be examined by the carrier's doctor before he returned to work. The claimant was not at home but the message was left with claimant's wife. The claimant reported for work on his assignment on March 9, 1956, and when he was asked by Foreman Hardwick if he had been examined by the carrier's doctor, he stated that he had not but that he had received treatment from a chiropractor. The claimant was advised by Foreman Hardwick that since he had failed to follow the instructions of the

carrier regarding the medical examination and had produced no evidence from his own doctor that he was in condition to return to work, he would not be permitted to return to work until he was examined by the carrier's doctor. The claimant was examined by the carrier's doctor and was permitted to return to work on his regular assignment on March 12, 1956. This claim is for eight hours at the pro rata rate for March 9, 1956.

This Board has held that in the absence of any provision in the Parties' effective agreement relating to physical examinations, and none is cited here, when an employe is returning to work from a serious illness, the company is entitled to ascertain the extent of his recovery and the possibility of recurring attacks thereof as a protection to the employe, his fellow employes and the company.

The ailment complained of by this employe was not of a serious character nor would it be, as reported, a basis for the carrier to believe that if the claimant were allowed to return to work that it might cause injury to himself, his fellow employes or the company.

The action of the carrier in requiring a compulsory physical examination of the claimant in this case is without justification, therefore, the claim must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.