

Award No. 4520
Docket No. 4449
2-CNO&TP-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist Robert L. Cook was unjustly held out of service from February 19, 1962 until July 31, 1962.

2. That accordingly, the Carrier be ordered to reimburse this employe for all time lost from March 10, 1962 until July 31, 1962, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: Robert L. Cook, hereinafter referred to as the claimant, is employed by the Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, as a machinist at the Chattanooga, Tennessee Shops, with a seniority date of September 6, 1960. His previous employment with Southern Railway System was at Spencer, North Carolina, where he worked as machinist helper, machinist helper apprentice and machinist. His total employment history with Southern Railway System dates back twenty (20) or more years.

On July 27, 1961 the claimant reported off at Chattanooga due to being sick. He returned to his home at Salisbury, North Carolina and submitted himself to the local doctors. The claimant continued under the care of the Salisbury doctors, and in addition, under the care of Dr. Jane H. Higbee, Director, Rowan County Mental Health Clinic. On February 15, 1962 Dr. Jay L. Smith, Jr. the claimant's family physician, and also examining doctor for the carrier, certified by letter of that date that the claimant was qualified to return to work immediately. On February 19, 1962 the claimant reported to his job at Chattanooga and presented the letter from Dr. Smith to the Carrier's Shop Manager, Mr. K. L. Pollitt. It reads as follows:

of his own action as an alcoholic and unstable person. It was not because of any wrongful act of carrier.

Cook was paid unemployment benefits by the Railroad Retirement Board during the period involved in the claim as follows:

14-Day Periods	Compensation
8- 5-62 - 3-18-62	\$ 81.60
3-19-62 - 4- 1-62	102.00
4- 2-62 - 4-15-62	102.00
4-16-62 - 4-29-62	102.00
4-30-62 - 5-13-62	102.00
5-14-62 - 5-27-62	102.00
5-28-62 - 6-10-62	102.00
6-11-62 - 6-24-62	102.00
6-25-62 - 7- 8-62	102.00
7- 9-62 - 7-22-62	102.00
7-23-62 - 8- 5-62	102.00
	<u>\$1,101.60</u>

The claim which the association here attempts to assert on behalf of Machinist Cook is wholly without basis and is unsupported by the agreement between carrier and its employes of the machinists' class or craft. Machinist Cook does not have a contract right to the compensation here demanded on his behalf. In this situation the board cannot do other than make a denial award.

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.

Parties to said dispute were given due notice of hearing thereon.

The Division first finds that the Carrier did not act unreasonably or arbitrarily in this case when it requested the Claimant to submit to a physical examination to be given by the Carrier's physician, in view of the fact that Claimant had laid off sick from July 27, 1961 to February 19, 1962. It appears to the Division that it is not inappropriate or improper for the Carrier, confronted with an extended absence based on illness and not being forbidden by any contractual provision, to request the Claimant to submit to a medical examination in order to ascertain the current state of the Claimant's physical condition before permitting him to return to work. There are numerous awards of this Division which have so held. See, for example, Awards 2799, 2989, 4099.

The Division, however, further finds that while the Carrier may subject the Claimant to a physical examination, it is not at liberty at will to disregard all the existing available competent medical evidence in arriving at a determination concerning the physical fitness of the Claimant. The record of this

case indicates that there was ample competent medical testimony to support the Claimant's contention that he had fully recovered from his disability and was fit to resume his normal work duties. The same record, on the other hand, does not contain or disclose the medical examination made by Dr. Newell, Company Surgeon, and alluded to by Dr. Newell in his letter of April 4, 1962 to Dr. R. G. Carothers, Carrier's Chief Surgeon, and upon which examination the Carrier principally based its action in denying the Claimant the opportunity to return to work.

But in any event, when on April 4, 1962 Dr. Guy Zimmerman, considered by the Carrier to be a competent psychiatrist, reported to Dr. Newell that the Claimant's condition would probably not interfere with his work adjustment, there did not appear to be after that date any valid reason for further withholding the Claimant from service.

In light of the total record of the case, the Division concludes, that the Carrier's action in withholding the Claimant from service on or after April 4, 1962 was unwarranted and that he should have been restored to duty as of that date.

AWARD

Claim sustained except as modified by the aforementioned findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1964.