

Award No. 472

Docket No. 489

2-CRI&P-CRI&G-FO-'40

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. & L. (FIREMEN & OILERS)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY CO.**

CHICAGO, ROCK ISLAND AND GULF RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: That W. C. Cargo, stationary fireman at Okalahoma City, Oklahoma, be compensated for all time lost from June 26, 1936, to November 14, 1936; total claim amounting to \$628.56.

EMPLOYEES' STATEMENT OF FACTS: On the night of June 17, 1935, Mr. W. C. Cargo, claimant in this case, was taken suddenly ill with severe chills. After a series of chills, and his condition apparently growing worse, he called for Dr. Frank Harbison, who was employed by the Rock Island Employees' Hospital Association, of which Mr. Cargo was a member. However, Dr. Harbison did not respond to the call, and a Dr. McCabe was then sent for. Dr. McCabe responded and gave treatment. Several days later the case was turned over to Dr. A. R. Lewis who is also employed by the Rock Island Employees' Hospital Association. Dr. Lewis treated the case until August 12, 1935, when he (Dr. Lewis) authorized Cargo sent to the hospital at El Reno, Oklahoma, which hospital had been designated by the Employees' Hospital Association to treat cases of employees who were in need of hospitalization.

At the El Reno hospital, Cargo became the patient of H. C. Brown, M. D., and he remained in this hospital until December 8, 1935, on which date he was released, as his condition had improved to the extent that he was able to be up and around. However, he remained in the care of Dr. Brown and continued to receive treatment at regular intervals. During the following spring months, and because he felt recovered, with the exception of loss of physical strength, Cargo went to his father's farm in Texas for rest and to await complete recovery.

After he completely recovered, he called at the office of Dr. Brown—this was on June 24, 1936—and Dr. Brown's opinion then, after examining him, was that he would be able to resume the duties of his occupation as stationary fireman on June 26, 1936, and he then gave Cargo his release to deliver to the foreman at Oklahoma City.

Mr. Cargo appeared at the roundhouse on the morning of June 25, 1936, and presented his release to his foreman, Mr. G. F. Hoberg. Mr. Hoberg then told Cargo to go out into the shop and re-acquaint himself with his duties as fireman, as he insisted there were numerous changes made while

above. Subsequent examinations by Dr. Harbison supported the management's position in not permitting Mr. Cargo to return to service until November 14, 1936. We feel his reports are self-explanatory.

The carrier is in no manner responsible for Mr. Cargo's illness. It is unfortunate that he became ill but there is no rule in the agreement which provides that employes must be paid when they are not physically able to perform their duties, and it would be most unjust to penalize the carrier by requiring it to make payment in a claim of this kind, when it did, in fact, restore the employe to service before he was fully able to take care of the work of his assignment, and did by this action permit him to build up his health and strength so that he could finally perform in full the work of his assignment, and if there had been any cause for a claim it certainly would have been presented at the time and not several years after his restoration to the service.

Further, the carrier has information that during the period covered by this claim Mr. Cargo was further incapacitated on account of being involved in a street car accident.

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 said dispute were given due notice of hearing thereon.

The claim here is on behalf of a stationary fireman for compensation for time lost from June 26, 1936, to November 14, 1936.

The claimant had been off ill approximately a year and sought to return to duty on the date from which his claim begins, i. e., June 26, 1936, but was not allowed to return until November 14, 1936. There is no question about his illness and incapacity to perform his service prior to the date he sought to return. It appears that a few days previous to that he went to the company doctor at his point of duty and underwent an examination as to his fitness to resume his duties. This examination was on June 16, 1936, a report concerning which was made to the chief surgeon under date of June 22, recommending against approving his return to work for the time being. In the meantime, claimant went to another company doctor located at another point but who had been treating him during the illness and from him obtained a letter under date of June 26, 1936, expressing his opinion that the man was sufficiently recovered to resume his duties. This he presented to the roundhouse foreman and was told he might return to work the next day. Later, however, the foreman advised him that he could not do so. It appears that neither doctor knew of the examination or report of the other at the time they were being made. The claimant was again examined in November of the same year.

The case simply boils down to a difference of opinion between two doctors and claimant wishes the benefit of the one which would have returned him to service earlier than was done. There is no indication of any bad faith in the matter and both doctors' opinions were subject to the final conclusion of the chief surgeon whose conclusion was against allowing him to return at the time he first sought to.

There is no way this Board can determine which doctor was right. The fact that claimant was ultimately returned to work in November does not establish that the opinion of the doctor at El Reno was right and that of

the one at Oklahoma City was wrong in June. Admittedly he was convalescing at the time and it is entirely possible that he underwent sufficient additional improvement between then and November 14, the date the Oklahoma City doctor authorized his return to work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1940.