

Award No. 998
Docket No. 924
2-P&PU-FO-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

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

PEORIA AND PEKIN UNION RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on and since June 6, 1943, the carrier has arbitrarily and unjustly dealt with Laborer Ben Guyton by demanding that he submit to a physical re-examination not provided for within the provisions of the current agreement.
2. That Laborer Ben Guyton be restored to service.
3. That Laborer Ben Guyton be compensated for all wage loss suffered by him since June 6th, 1943.

EMPLOYEES' STATEMENT OF FACTS: Laborer Ben Guyton became ill in December, 1942, and was committed to the care and treatment of Doctor Milo T. Easton, physician and surgeon—an authorized company doctor. Guyton was released by Dr. Easton to return to light duty in the service of the carrier on June 6, 1943.

On June 6, 1943, Guyton reported for duty at the carrier's round-house office presenting his release to his foreman. The foreman, in turn, advised that he would not accept the release and that it would be necessary for Guyton to be examined by the carrier's chief surgeon before he would be permitted to resume work.

Guyton then consulted his local committee and was advised that there was no rule in the current agreement justifying the demands made upon him by his foreman. Guyton then placed the matter in the hands of the local committee and elected to go home and await the determination of the case.

In the handling of the case that followed between the employes' representatives and the carrier, there was no settlement reached. Guyton is still out of service.

The current agreement is dated effective April 1, 1938.

POSITION OF EMPLOYEES: In accordance with Rule 9 of the current agreement, reading,

LEAVE OF ABSENCE.

(a) Employes will not be granted leave of absence for a longer period than ninety (90) days in any calendar year, except in case of

Railway Labor Act, in that it does not arise out of an interpretation or application of any agreement concerning rates of pay, rules or working conditions.

Laborer Guyton was directed to present himself for physical reexamination in accord with carrier's operating rule and practice which has been in effect for many years and which is strictly a managerial prerogative. There was no violation of any schedule rule contained in carrier's agreement with the organization. The request here presented to your Board is for a new rule. The carrier maintains that the Second Division of the National Railroad Adjustment Board is without authority to inject any such new rule into the current agreement between the Peoria and Pekin Union Railway and the firemen and oilers organization, and that your Board is, therefore, without jurisdiction in this case. Carrier requests that your Board so find and dismiss the case accordingly.

If the Board elects to assume jurisdiction in this case and overrules carrier's contention that the Board does not properly have jurisdiction, carrier reiterates its statement that there was no violation whatever of any schedule rule in Guyton's case, that organization's claims are without merit, and that the practice of requiring physical reexaminations under certain conditions as recited in carrier's position is strictly a management function. On these grounds carrier respectfully requests that paragraphs 1, 2 and 3 of organization's ex parte submission be denied in entirety.

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.

It is unnecessary, for the purposes of this proceeding, to determine whether under the controlling agreement the carrier has the right, in conformity with its operating rule and alleged practice, to require the reexamination of all employes who for any reason have remained out of service for a period of 90 days or longer, before they are permitted to resume service. Disposition of this dispute, which is concerned with specific conduct on the part of the carrier and the claimant, must rest upon the facts of this particular case.

The evidence of record discloses that on September 4, 1942 the claimant suffered an accident in the course of his employment; that he received treatment and hospitalization as a result of this accident; that he returned to service on his regular assignment October 5, 1942; that he continued to work until December 29, 1942; that on this date he laid off on account of an ailment related to the accident of September 4, 1942; that he received a number of leaves of absence in connection with this lay-off; that he again presented himself for service on June 6, 1943; that he then submitted a statement from his physician that he "is now able to do light work"; that on July 24, 1943 he submitted a supplementary statement from the same physician that he "is now able to go back to his usual occupation in the Roundhouse"; that when he presented himself for service on June 6, 1943 he had been away from his work for a period of more than five months because of a physical disability which required prolonged treatment; that when he thus presented himself for service he was told that it would be necessary for him to report to the carrier's physician for physical reexamination and release before he would be permitted to resume work; that he did not present himself for such reexamination and has not been restored to service.

In these circumstances, which obviously put the carrier on definite notice as to the adequacy of the then physical condition of the claimant, and in the absence of any provision in the controlling agreement either providing for physical reexaminations or prohibiting them, it is the opinion of the Division that the carrier did not act arbitrarily or unjustly in requiring the claimant to submit to a physical reexamination by the company physician. If, after such reexamination, the report of the company physician had conflicted with that of the claimant's personal physician, there conceivably might have been a basis, in the interest of according the claimant just treatment, for ordering that the conflict be dissolved through an independent report by a neutral physician. But the mere requirement of a physical reexamination by the company physician did not, in the light of the facts of record in this proceeding, constitute unjust treatment or a violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois. this 16th day of March, 1944.