

Award No. 1288

Docket No. 1205

2-MKT-CM-'49

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYES: That Car Inspector E. R. Pritchard, has been unjustly deprived of his service rights since July 4, 1947 and accordingly, he is entitled to be reinstated to service and compensated for all time lost subsequent to aforesaid date.

EMPLOYES' STATEMENT OF FACTS: E. R. Pritchard, hereinafter referred to as the claimant, was employed by the carrier as car inspector at Houston, Texas, December 9, 1944, and his regularly assigned hours were from 11 P. M. to 7 A. M., seven days a week, at the time he was removed from the service on July 5, 1947.

Claimant became ill during his tour of duty June 16, 1947, and was removed to the hospital where he was examined by the carrier's local surgeon, Dr. C. S. Gates, who placed the claimant under the care of Dr. A. M. Dashiell for treatment. Claimant responded to treatment and sufficiently recovered from his illness to be released from the hospital June 29, 1947, and this is affirmed by the statement of Dr. Dashiell, copy submitted herewith and identified as Exhibit A.

Claimant returned to work on his regular shift on June 29, 1947, worked through July 3 and reported off for the night of July 4, 1947. When claimant reported for duty on July 5, 1947, Foreman Watson advised him that another man had been assigned to his job pending a report from Dr. Gates. This is affirmed by letter of November 17, 1947, addressed to the undersigned, copy submitted herewith and identified as Exhibit B.

On August 2, 1947, claimant was notified by letter from General Master Mechanic C. H. Dick that he had been removed from active service and copy of this letter is submitted and identified as Exhibit C.

Under date of November 24, 1947, claimant was notified by Car Foreman P. H. Watson to report to Dr. Gates for a medical examination, a copy of notification which is submitted and identified as Exhibit D.

The agreement effective September 1, 1938 is controlling.

POSITION OF EMPLOYES: It is submitted that within the provisions of Rule 27 (b) reading in pertinent part—

4. E. R. Pritchard and the organization have not fulfilled conditions precedent of the Railway Labor Act to give the Second Division jurisdiction of the case.
5. E. R. Pritchard has not been damaged by the Missouri-Kansas-Texas Railroad Company of Texas and has suffered no wage loss.
6. The claim of E. R. Pritchard and the organization in its entirety is denied.

The carrier respectfully requests that the Board deny the claim.

The carrier requests ample time and opportunity to reply to any and all allegations contained in the employees' submission.

Except as expressly admitted herein, the carrier denies each and every, all and singular, the allegations of petitioner's claim, original submission, and any and all subsequent pleadings.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Pritchard's unconscious condition on June 17 was sufficient reason for the carrier to find out the cause of his disability, and to appraise its relevance to the probabilities of his continued satisfactory job performance. The report of the carrier's doctors reveal that Pritchard had been subject to trembling and emotionalism, and that he was taking bromide as a sedative. In their opinion, the likelihood of recurrent emotional attacks made it unwise to permit Pritchard to remain at work. There is no basis for concluding that the doctors acted arbitrarily or in bad faith. The carrier's letter of August 2, 1947, notifying Pritchard of his removal from active service, set forth the nature of the doctors' diagnosis, and the reason why the carrier considered it appropriate to take such action. If Pritchard disagreed with the diagnosis, he could have attempted to secure a favorable report from his own physician.

This was not a discipline case, and, therefore, it was unnecessary to conduct an investigation in accordance with Rule 27 (a) of the controlling agreement.

It is true that Pritchard's service with this carrier, extending for several days after his discharge from the hospital, and his subsequent employment on the same job with other railroads, after passing their physical examinations, is an indication of his fitness for work. In the light of such employment record it appears that Doctors Gates and Kieffer were extremely cautious when they reported that Pritchard should not be permitted to remain at his occupation. Yet, at the time of their diagnosis, there was a reasonable basis for proceeding cautiously. Nowhere, in this record, is there any medical evidence tending to disprove the accuracy or soundness of their conclusions. Dr. Dashiell's letter of July 25, 1947, dealt solely with Pritchard's recovery from bromide toxemia. It did not specifically eliminate emotional instability as a factor.

The carrier is rightfully entitled to know the extent of Pritchard's recovery from such ailment, and the degree of remoteness of recurrent attacks. These are matters which can be passed on only by competent medical authorities. The doubt about Pritchard's condition can be removed only by a report from a thoroughly qualified impartial doctor. If, after

examination, Pritchard is found to be in suitable condition to perform his duties, he should be reinstated to active service, with seniority unimpaired, but without compensation for time lost.

AWARD

Claim remanded for settlement consistent with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1949.