

**Award No. 1384**

**Docket No. 1303**

**2-ACL-CM-'50**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (Carmen)**

**ATLANTIC COAST LINE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That under the current agreement Carman Walton J. Walker was unjustly deprived of his service rights from August 13, 1948 to August 8, 1949, inclusive, and that accordingly the carrier be ordered to compensate this employe for all of said time lost.

**EMPLOYEES' STATEMENT OF FACTS:** The AB&C Railroad Company was consolidated with the ACL Railroad Company effective January 1, 1946, at which time, Walton J. Walker held service rights as car repairer at Fitzgerald, Georgia, and was listed on the carmen's Seniority roster as mechanic with a seniority date of August 15, 1924. At that time, January 1, 1946, Walker was not in active service because of illness extending from 1934 to 1947; however, there were in active service more than 20 car repairers junior to Mr. Walker. Subsequent to the consolidation, the number of junior carmen in active service at Fitzgerald has fluctuated, the number generally and presently exceeding 20.

During Mr. Walker's long period of illness he was hospitalized on three different occasions at the Veteran's Administration Facility (General Hospital) Lake City, Florida—February 9, 1934, to April 8, 1934; October 1, 1934, to October 17, 1934; and December 30, 1941, to January 8, 1942.

In 1935 Mr. Walker filed application for pension with the Veteran's Administration. From the scant records, it appears that his claim was denied and remained inactive until May, 1939, when the claim was re-activated through correspondence originating in the Veteran's Service Office, Atlanta, Georgia. This re-activated application for pension was denied, appealed, denied again and through the assistance of Congressman John S. Gibson was re-opened and finally on July 15, 1942, after a third hospitalization, denied by the Board of Appeals because Mr. Walker was found neither totally nor permanently disabled.

Subsequently, Mr. Walker sought to return to work with the AB&C Railroad and was sent to Atlanta for physical examination by the chief surgeon. We have no record of the findings or report of this examination; however, Mr. Walker was not returned to duty, being verbally advised that the doctor failed to O.K. him.

covered that they had taken this unauthorized action—this not being discovered until Form 127 approved by Dr. Ware was submitted to Dr. Walden—they were directed to remove Walker from service, until such time as there had been a finding that he was mentally competent and the guardianship was removed.

In the face of the mass of evidence which is here submitted, there surely can remain no doubt in the minds of the Board members but that carrier was acting in good faith in believing that during the time of Mr. Walker's continued absence over a period of 15 years, he was, as he alleged on more than one occasion, totally and permanently disabled. This, in itself, even had the carrier not also had information that he suffered from a mental disorder, would have caused carrier to look with considerable skepticism upon his alleged ability to return to duty, without substantiating information from his attending physician.

While carrier does not, in any manner, waive its contention that it was entirely justified in seeking a diagnosis from Claimant Walker's attending physician during his extended period of absence, it is here stated most emphatically, that carrier's offer to join in the creation of a three-man medical board to pass upon Claimant Walker's physical and mental condition was indeed an offer which should have been readily accepted by the employees. Their cooperation in the formation of this Board should have been, by all means, forthcoming, but the record conclusively indicates that such was not the case. The finding of such a board, would, no doubt, have aided either Claimant Walker or his representative in having the guardianship dissolved. In this connection, carrier invites special attention to N.R.A.B., Second Division Award 1288, dated January 19, 1949, wherein your Board held that the employee's condition was sufficient reason for the carrier to find out the cause of his disability and to appraise its relevance to the probabilities of his continuing satisfactory job performance. Likewise, as was held in that award, this carrier was rightfully entitled to know the extent of Claimant Walker's recovery from his ailment, which was a matter that could be passed upon only by competent medical authority. In Award 1288, your Board suggested that doubt about the claimant's condition could be removed only by a report from a thoroughly qualified, impartial doctor. This was what carrier sought to obtain by the suggestion for creation of a three-man medical board, one member of which would be an impartial medical authority, specializing in the illness with which Claimant Walker had been afflicted.

In conclusion, carrier wishes to point out that it at no time acted in an arbitrary manner but at all times acted solely for the best interests of Claimant Walker, the employees with whom he would be associated, and this company. There was no desire on the part of the carrier to continue to hold Claimant Walker out of service if he was fully recovered from his previously diagnosed disability and was fully capable of resuming his normal duties, but until such time as carrier was convinced this was a fact, it felt compelled to act to protect its interests as well as those of its other employees who would be associated with him. Carrier wishes to reiterate that had there been displayed the slightest bit of cooperation on the part of Claimant Walker or the employees' representatives, it is most probable that Claimant Walker would have lost but little, if any, time from duty. Carrier feels there is no justification whatever for the employees to make claim in behalf of Claimant Walker for time which was lost by him solely through his own and the organization's failure to act promptly in response to carrier's request, and prays that this Board will reject the claim as being wholly unwarranted and unsupported by the facts.

**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 were given due notice of hearing thereon.

Under the unusual facts and circumstances appearing in this case, the carrier had a right as it did to require claimant to timely furnish factual medical history, data or information assuring it that he had fully recovered physically and mentally, or that he submit to medical examination as required for that purpose and obtain a discharge from guardianship as mentally incompetent.

Claimant not only did not timely comply with such requirements, but also subsequently refused to submit to examination by a 3-man medical board, one of whom should be a neutral specialist, as proposed by the carrier and admittedly he was not discharged from guardianship until just prior to July 4, 1949. On that date claimant met the carrier's requirements and upon physical examination subsequently approved by the chief surgeon was restored to service. In the light of the record before us, which we have carefully examined, the Division concludes that claimant was not unjustly deprived of his service rights from August 13, 1948, to August 8, 1949, inclusive. Therefore the claim should be and is denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling,  
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1950.