

Award No. 1397

Docket No. 1305

2-B&M-MA-'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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist Arthur Gordon was unjustly deprived of his service rights from July 25 to September 22, 1949, inclusive.

2. That accordingly the carrier be ordered to:

(a) Compensate this employe for all of the aforesaid time lost.

(b) Reimburse this employe for the examination fee of \$25.00 which he was required to pay to Dr. Levine.

EMPLOYEES' STATEMENT OF FACTS: Machinist Arthur Gordon, hereinafter referred to as the claimant, was regularly employed by the carrier as a locomotive inspector at the New Boston Terminal, Boston, Massachusetts, and his seniority date is January 1, 1918.

On April 29, 1949, the claimant became ill at work and was taken to the Massachusetts General Hospital, where he remained until discharged on May 6, with advice from the discharging doctors that he was not only able to return to work but it was advisable that he should do so.

The carrier would not permit the claimant to return to work until September 23, although he was approved as able to return to work on:

(a) May 6 by doctors at the Massachusetts General Hospital.

(b) June 10 by his family physician, Dr. Goldfarb, copy of which is submitted, identified as Exhibit A.

(c) July 21 by the carrier's Dr. Sullivan.

(d) September 16 by the carrier's recommended specialist, Dr. Levine, copy of which is submitted, identified as Exhibit B.

The claimant, on the advice of the carrier's Dr. Sullivan, started work on July 25, only to be removed after a period of about two (2) hours by the general foreman, with advice to report to Chief Surgeon Knowles, who de-

that some new referee will overrule his predecessors and depart from these well-established and well-recognized principles.

There can be no charge of arbitrary conduct or bad faith on the part of the carrier's chief surgeon. It was known that Gordon had had a heart condition in 1944, that he had collapsed while at work on April 29, 1949, that he had been eight days in the hospital where his trouble was diagnosed as a shock. In the opinion of Dr. Knowles, it was not safe for Gordon to climb to the top of locomotives but in a desire to give Gordon every chance the doctor suggested that Gordon be examined by an outside doctor and also suggested that he be examined by a doctor at the Massachusetts General Hospital where the records were available, or by a doctor to whom the records were made available. Gordon did not choose to be examined by a doctor at the hospital and it is obvious from Dr. Levine's letter (carrier's Exhibit "B") that he had not seen the records. Dr. Levine wrote—

"A few months ago he had a peculiar spell which I did not witness. Exactly what it was I cannot be sure. It sounded like an emotional upset of some kind." (Emphasis added by the Carrier)

Moreover, Dr. Levine confined his opinion to what was shown on September 13, 1949, nearly five months after Mr. Gordon's collapse. The claim should be dismissed as directly parallel to Award 472 quoted above.

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.

Claimant was regularly employed as a locomotive inspector with seniority dating from January 1, 1918. On April 29, 1949, a heart condition with vascular accidents and cerebral disturbance, or shock, caused his collapse while at work and he was taken to a hospital where he remained until May 6, 1949. There is no competent evidence, supporting claimant's conclusion, that on such date he was approved as able to return to work by physicians at the hospital, or that the carrier was so advised. In a letter dated November 1, 1949, claimant's personal physician reported that he had examined claimant on June 10, 1949, and then found him "fully recovered and able to return to the same type of work he was doing previously." It will be noted, however, that the letter was written after claimant had returned to work and after this claim was handled on the property.

In any event claimant did not report for work until July 21, 1949, and there is no evidence which could sustain a finding that he was theretofore restrained from doing so by the carrier. He was then examined by a carrier's physician and approved for return to work. Thereafter on July 25, 1949, he reported for work and was instructed to see the chief surgeon who having knowledge of claimant's medical history had not yet approved the physician's report. He did, however, after an examination, approve claimant's return to work in a position where he would not be required to climb high places. Such work not being then available, it was finally agreed by the chief surgeon that if one of two named physicians would examine claimant he would abide their decision. One of such physicians, a specialist, who had theretofore treated claimant for a heart condition in August, 1944, examined him on September 13, 1949, and on September 15, 1949, reported that claimant then had a mild angina pectoris and was very nervous from doing nothing, but would likely feel better if he did some work and should be put back to work. Upon receipt

of such report the carrier kept its agreement and returned claimant to work on September 23, 1949.

In light of the record before it the Division cannot conclude that the carrier acted arbitrarily or unjustly. Under the circumstances it was rightfully entitled to know the extent of claimant's recovery and the degree of remoteness or probability of recurrent attacks after an undisputed illness of a serious character theretofore first manifested in August, 1944. See Awards 472, 481, 998, 1134 and 1288.

For the reasons heretofore stated the Division concludes that 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 18th day of July, 1950.