

Award No. 1703

Docket No. 1602

2-PULL-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly withheld Electrician J. Lightle from service for the period from March 25, 1952 to April 7, 1952.

2. That accordingly the Carrier be ordered to compensate the aforesaid Electrician for the wage loss suffered by him during the period from March 25, 1952 to April 7, 1952.

EMPLOYEES' STATEMENT OF FACTS: On March 3 Electrician J. Lightle, hereinafter referred to as the claimant, laid off account of sickness. The sickness was chicken pox, which is confirmed by statement of Dr. E. L. McCall, a copy of which is submitted herewith and identified as Exhibit A.

On March 25 the claimant appeared for work with a statement dated March 24, 1952 from his family physician that he was physically able to return to work, a copy of which is submitted herewith as Exhibit B.

Foreman Stipich refused to permit the claimant to return to work on March 25, also, would not permit him to return to work until April 7, 1952.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant was unjustly dealt with when he was improperly withheld from service for the period from March 25, 1952 to April 7, 1952. There was no justification for the carrier's action because the claimant off from March 3, with chicken pox was in proper physical condition to return to work on March 25, which is evidenced by Exhibit B. Also, it is further supported by Item 4 of the Sanitary Code and Regulations relative to reportable diseases and conditions and control of communicable diseases of St. Louis, which reads as follows:

"4. Chicken Pox (Varicella)

Isolation: Exclusion from school, and avoidance of contact with non-immune persons for seven (7) days after the appearance of the first crop of vesicles.

because of a communicable disease when in management's opinion the employee cannot safely be returned to work. Further, the working conditions existing prior to the time the present agreement was negotiated form as much a part of the working conditions as the rules in the agreement unless the written rules of the agreement specifically provide otherwise.

CONCLUSION

The facts as herein presented support the premise upon which the company rests this case. The company has shown that no rule in the agreement prohibits the company from withholding an employee from service who has been absent from work because of a communicable disease when in management's opinion the employee cannot safely be returned to work. Also, the company has shown that management has an obligation to protect its employees from possible infection or contagion and that the company would have been seriously remiss if it had not acted on the basis of the recommendation of the company doctor who examined Electrician Lightle on the dates in question. Additionally, the company has shown that prior to the consummation of the present agreement between The Pullman Company and this class of employees the practice in question was well established. Finally, the company has shown that awards of the various Divisions of the National Railroad Adjustment Board support the position of the company in this dispute.

The claim of the organization that the company should have permitted Electrician Lightle to return to work on March 25, 1952, and that he should be reimbursed for all time lost until the time he was returned to his position on April 7, 1952, is without merit and should be denied.

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.

The Electrical Workers of System Federation No. 122 contend The Pullman Company improperly withheld Electrician J. Lightle from service from March 25 to April 7, 1952. Because thereof, it asks that the Company be required to pay Lightle for the wage loss he suffered during this period.

After completing his tour of duty on March 3, 1952 claimant did not again report for duty until March 19, 1952. This lay-off was due to the fact that he had become ill with chicken pox. When he reported for work on March 19th his foreman instructed him to report to the Company doctor for a physical check-up. This he did on March 20th. The Company doctor advised him that he would have to remain away from work because the pox lesions on his face had not thoroughly healed. The doctor explained that this condition presented a situation which might, if claimant had been permitted to return to work, have caused him to communicate the disease to others or have caused the lesions to become infected. Claimant again reported for work on March 25th. He then had a statement from his family doctor stating he was physically able to return to work. It should here be stated that the Company has never questioned that fact. However, his foreman again directed him to report to the Company doctor, which he did. The Company doctor found the pox lesions had not healed and refused to O.K. him for return to work. This situation continued until April 7th. From an examination of claimant on that day the Company doctor found the pox lesions had completely healed, thus preventing any possible communication of the disease therefrom to others

and also eliminated any possibility of the lesions becoming infected. He consequently O.K.'d claimant for work and claimant reported for duty to the Company at noon on that day.

When illness has kept an employe away from work, and he thereafter seeks to return thereto, a requirement on the part of the Company that he must subject himself to a physical examination by its doctor, and be O.K.'d by him for work, is a reasonable and not an arbitrary or unreasonable requirement on its part. This is particularly true if the disease he had was of a communicable nature. See Awards 998, 1134, 1419 and 1459 of this Division.

We find no rule of the parties' agreement, nor is any cited, which would prohibit the Company from withholding an employe from returning to its service when, because of his condition, he cannot safely be permitted to work because there is still danger that the disease he had may be communicated to others, particularly, in this instance, to his fellow employes. In fact we think such a rule, if contained in an agreement, would be void as against public policy. The only question is, did the Company, in this respect, act upon sufficient facts so its action can be justified or must it be said that it acted arbitrarily? We think the Company was fully justified in relying upon the reports of its doctor and, in fact, we think the record supports the conclusion he reached from his examination of claimant.

In view of the foregoing we find the claim here made in behalf of Lightle to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1953.