

Award No. 2042

Docket No. 1892

2-UT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the agreement Coach Cleaner Carrie Lee was improperly denied the right to work her regular assignment of 7:00 A. M. to 3:00 P. M. July 27, 1954.

2. That the Carrier be ordered to compensate this employe for 8 hours at pro rata rate for July 27, 1954.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Carrie Lee hereinafter referred to as the claimant, was employed by the Union Terminal Company, hereinafter called the carrier at Dallas, Texas on January 7, 1944.

Under date of July 24, 1954, claimant working 7:00 A. M. to 3:00 P. M. shift laid off sick on or about 9:00 A. M. to Assistant Coach Foreman Williamson claimant was off that part of Saturday Sunday and Monday. Claimant reported to Assistant Coach Foreman Williamson, on the afternoon of July 26, 1954, for work Tuesday morning July 27, 1954, upon reporting Tuesday morning eight minutes to 7:00 A. M. Claimant was instructed by Coach Foreman Cox, to go to the doctor as he was not going to let her work until examined. The claimant complied with Coach Foreman Cox's instructions and went to the doctor who examined her and told her to return to work, she returned to the terminal and was again instructed by Foreman Cox to carry the doctor's report to Mr. Lumpkins Assistant Vice President and General Manager, who instructed the claimant to return to work, upon doing so the claimant was advised by Foreman Cox, that he had called someone in her place and he was not going to pay them both which resulted in the claimant loosing a days pay.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it. The agreement effective March 1, 1938, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that there is no rule in the controlling agreement or the Memorandum of Agreement dated March 1,

committee to be held during regular working hours without loss of time to committeemen."

Local handling of this grievance was initiated in a letter from the local chairman to the mechanical foreman, dated August 17, 1954, which is beyond the ten days' limit set forth in the rule quoted above.

The carrier submits that the claim made by the organization is out of order and without merit, and we respectfully urge the Board to so find and deny their claim.

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.

Considering the circumstances of the instant case, as stated by the carrier, it is our opinion that the claimant was not unjustly dealt with. The carrier asserts that it was acting within its managerial rights in requiring claimant to submit to an examination by the company doctor or to get a release from the doctor stating that she (claimant) was in physical condition to perform her duties.

This case is one which is replete with disputed facts. The carrier stated that the claimant reported that she had injured her side. This was denied by the claimant. The carrier stated that on the day the claimant returned to go to work that she did not report for work until after the time her assignment began.

This Board has not been endowed with the gift of preternaturally acute perception of what is not ordinarily discernible. The burden of proof is on the claimant to prove the claim. We are unable to determine from the disputed facts of record just what actually took place. Such being the case, we believe that the instant claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.