

Award No. 2725
Docket No. 2574
2-CRI&P-F&O-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL (Firemen & Oilers)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Laborer Frank Barnett was unjustly deprived of his service rights from March 15, 1956 to June 29, 1956, both dates inclusive.
2. That accordingly the Carrier be ordered to compensate the aforesaid employe for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Laborer Frank Barnett has been in the employ of the carrier as a laborer at their Armourdale Shops since February 10, 1943.

On December 15, 1955, Laborer Barnett, hereinafter referred to as the claimant, commenced his vacation for the year 1955, traveling to Los Angeles.

During this vacation period and while in California, the claimant became ill with pneumonia, requiring his hospitalization.

Following his release from the hospital in Los Angeles, he returned to his home in Kansas City about January 15, 1956, where he continued to convalesce until his recovery, returning to service on March 1, 1956. Prior to his return to service he was examined and released for such service by a company doctor, Dr. Carey of Kansas City on February 29, 1956.

In accordance with implied instructions contained in letter dated March 7, 1956, addressed to the office of Dr. T. S. Bourke over the signature of Joseph W. Shonlau, General Supervisor Surgical Dept., copy of which was furnished the claimant, and copy of which is submitted herewith and identified as employees' Exhibit A, the claimant visited the office of Dr. T. S. Bourke

Also, in view of the findings outlined in the second paragraph of Dr. Bourke's letter, it can readily be seen that Barnett was not in any condition to work during period of claim.

Every precaution must be taken to safeguard the health and interests of the employe and his co-workers and to prevent accidents resulting from impaired physical conditions. It cannot be said that there is anything unreasonable or discriminatory about holding a man out of service due to his physical condition. To the contrary, this arrangement prevents rather than results in discrimination.

The withholding of Barnett from service due to his physical condition was a simple case of the carrier taking proper precautions for the protection of an employe, as well as his fellow workers, and in the circumstances obtaining, it must be recognized that management's decision to hold Barnett out of service was reasonable and proper. The employes have offered no evidence to the contrary.

The carrier is compelled to be abundantly cautious about the safety of their employes to guard against injury to the employe and his co-workers. The examinations given the claimant in the instant case were necessary for the protection of the employes. (See Awards 875 and 2886 of the Third Division.)

Most certainly the discipline Rules 14 and 16 do not apply to the instant case. (See Award 1288 of this Division and Award 676 of the Third Division.)

From attached carrier's Exhibit F, fourth paragraph thereof, it will be noted the general chairman indicates the physical condition of the employe is not an issue but that Rules 14 and 16 are. In view of Awards 1288 and 676, mentioned above, the claim, being prosecuted on the basis of violation of Rules 14 and 16, must be denied. Nor do we find any other provision of the current agreement which was violated by the carrier in the handling of the Barnett case.

We feel every consideration was given Claimant Barnett even to the extent of finding light work for him. Inasmuch as Barnett was returned to service upon being released by the physician as being able to return to light work, the claim of the employes for time he was out of service has been declined as without merit or support under the agreement and we respectfully request your Board to so hold.

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.

This claim for pay because the employe "was unjustly deprived of his service rights" is based on the fact that he was taken out of service on a medical question.

Barnett had suffered an attack of pneumonia while on his vacation which was extended with sick leave. When he first returned and offered to work he was x-rayed and was told he was not able to work. The next time he was examined the company doctor approved his return to work and from March 1, to March 15, 1956, he performed his duties. On that day, in response to a letter concerning his hospital benefits, he presented himself at the office of the company physician, Doctor Bourke, who "observed" him and ordered him out of service. Doctor Bourke's March 15th findings were not made clear to the employees' organization until June 5. This letter leaves considerable doubt as to how much of an examination was given Barnett on March 15 and what conditions were found then which would justify removing him from service.

Following March 15, the local chairman and the master mechanic attempted unsuccessfully to resolve the dispute. On April 27 the master mechanic proposed a tripartite medical procedure which was rejected by the employees who preferred to depend on the medical report of W. T. Reeves, D. O., dated March 20.

We conclude that claimant was wrongfully removed from service March 15 and was wrongfully kept out of service until April 27. We find further that his continued absence from service beginning April 28 was based on his own decision to stand on the medical record already made, rather than cooperate in obtaining a fair medical evaluation.

AWARD

The claim is sustained. Carrier is ordered to compensate claimant for all time lost between March 16, 1956 and April 27, 1956, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1957.