

Award No. 2726

Docket No. 2584

2-PULL-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly withheld Cleaner Jean Neely from service as of January 12, 1956, up to and including August 9, 1956.

2. That, accordingly, the Carrier be ordered to compensate Cleaner Jean Neely for all time lost from January 12, 1956, to August 9, 1956, inclusive.

EMPLOYES' STATEMENT OF FACTS: Cleaner Jean Neely, hereinafter referred to as the claimant, was employed by The Pullman Company (hereinafter referred to as the carrier) on March 1, 1943. She is now employed in the capacity of cleaner at the Mott Haven Yards, in the New York District.

On January 11, 1956, the claimant was called into the foreman's office and advised to see her personal physician that evening. The claimant did not visit her personal physician, and as the result thereof she was directed to have the company doctor give her a physical examination on January 12, 1956, following which she was held out of service. A hearing was held at the request of the claimant, because of the fact that she had not previously been given a hearing prior to or at the time she was held out of service.

The circumstances that led up to the claimant being instructed to see her personal physician, and, further, the requirements by the foreman that she submit herself to a physical examination by the company doctor, are as follows:

On New Year's Eve, the claimant with her seven (7) year old daughter, was shopping in Macy's Department Store. The child became lost in the store and the claimant had an announcement made over the loud speaker by the

for work. In the light of such employment record it appears that Doctors Gates and Kieffer were extremely cautious when they reported that Pritchard should not be permitted to remain at his occupation. Yet, at the time of their diagnosis, there was a reasonable basis for proceeding cautiously. Nowhere, in this record, is there any medical evidence tending to disprove the accuracy or soundness of their conclusions. Dr. Dashiell's letter of July 25, 1947, dealt solely with Pritchard's recovery from bromide toxemia. It did not specifically eliminate emotional instability as a factor.

The carrier is rightfully entitled to know the extent of Pritchard's recovery from such ailment, and the degree of remoteness of recurrent attacks. These are matters which can be passed on only by competent medical authorities. The doubt about Pritchard's condition can be removed only by a report from a thoroughly qualified impartial doctor. If, after examination, Pritchard is found to be in suitable condition to perform his duties, he should be reinstated to active service, with seniority unimpaired, but without compensation for time lost."

CONCLUSION

In this ex parte submission the company has shown that on the basis of medical evidence in its possession management properly withheld Car Cleaner Neely from service during the period January 12, 1956-August 9, 1956, because of a mental condition. Additionally, the company has shown that awards of the National Railroad Adjustment Board support management's position in this dispute.

The claim of the organization in behalf of Car Cleaner Neely 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 facts contained in this submission prove that the employee did not cooperate with the employer during the period that her status was in doubt. Her attitude is understandable both from her personal point of view as well as from a medical standpoint. Because of the nature of her illness the difficulty of the carrier in assessing her condition is also understandable. Dr. Davis' favorable report dated May 7, 1956 was advanced to the company appeals officer July 20, 1956. Within a reasonable time (August 7) she was examined by Dr. Blackwell and was returned to work August 10 on a trial basis with certain reservations.

From the factual history contained herein, it may be summarized that the claimant demonstrated a behavior pattern which cast doubt on her ability to work. Under the circumstances the carrier was obligated and justified in taking the claimant out of service until the doubts were resolved. She was granted a hearing at her own request. There has been no showing of a rule violation and the claim cannot be allowed.

AWARD

Claim denied.

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.