

Award No. 3183

Docket No. 2769

2-NYC-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Cleaner Lambros Metrakos was unjustly dealt with when he was denied the right to work as such on and after August 12, 1954.

2. That accordingly the Carrier be ordered to:

(a) Restore Car Cleaner Metrakos to service as a Car Cleaner;

(b) Compensate Car Cleaner Metrakos at the Car Cleaners' rate of pay for all time lost as a result of Carrier's action retroactive to August 12, 1954.

EMPLOYEES' STATEMENT OF FACTS: Mr. Lambros Metrakos (hereinafter referred to as the claimant) was injured while working as a car cleaner at the Cleveland Union Terminal in February 1949. As a result of these injuries he was out of service from February 20, 1949 until May 2, 1949, when he was returned to service as a coach cleaner. He continued in that capacity until March 6, 1950, when he was compelled to report off from work because of the recurrence of the pain from the injury which he sustained in 1949. He has been out of service because of said injury since that date and because the carrier has refused to allow him to return to work. On June 22, 1954, Mr. Metrakos reported for duty, presenting to his employer a letter from his personal physician, Dr. N. Nintcheff. Said letter dated June 21, 1954, stating that he Mr. Metrakos, was able to return to work, copy of which is submitted herewith as employees' Exhibit A. However, the carrier refused his request.

much as the neutral doctor at that time specifically said the claimant could not perform the heavier duties of his former position, but could only perform light duties. Furthermore that the claimant must now first comply with the provisions of Article 6 of the physical examination understanding before he can be returned to service and that his present physical condition can provide no justification that he was physically able to do so in 1954.

The claim of the employes is, therefore, 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 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant, a car cleaner, had been out of service because of an injury and applied for reinstatement on June 22, 1954, presenting a certificate from his doctor stating that he was physically able to return to work. He was examined by the carrier's physician, who reported that he was not physically able to return to work. In accordance with the physical examination understanding a neutral doctor was selected.

That doctor examined claimant and made his report on August 12, 1954. His report to the claimant differs somewhat from that given to the carrier. In the portion which differs he stated to the claimant:

"This man has nerve root compression in the right lumbosacral area, with residuals which disqualify him for resumption of the heavier duties which he had been performing. He is, however, qualified for light duty such as that of a car cleaner."

In the report to the carrier the last sentence of that paragraph is as follows:

"He is, however, qualified for light duty in his former occupation."

In subsequent handling of this claim the difference was discovered and a request was made by the carrier to the doctor for clarification. On August 19, 1955, he wrote, "as a result of my examination of August 3, 1954, it is my opinion that this man was able to perform only the lighter duties of a car cleaner."

There were no established light duty car cleaner positions and the rules do not require the carrier to create one. Under such circumstances, on the basis of the medical reports and interpretation thereof by the neutral doctor, particularly his finding in both reports that claimant was unable to resume the heavier duties he had been performing, the claim is without merit.

A contention is made that subsequent employment of the claimant demonstrates his ability to work as a car cleaner. That would not affect

his ability at the time of the 1954 determination and whether his physical situation has improved is a matter to be determined in accordance with Article 6 of the understanding relating to physical examinations.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1959.