

Award No. 4442

Docket No. 4403

2-SAL-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Coach Cleaner Gussie Williams was wrongfully deprived of her service rights on and after October 4, 1961.
2. That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and paid for all time lost retroactive to October 4, 1961.

EMPLOYEES' STATEMENT OF FACTS: Gussie Williams hereinafter referred to as the claimant has been employed by the Seaboard Air Line Railroad Company, hereinafter referred to as the carrier, for 18 years, assigned as coach cleaner, Hialeah Shops, Hialeah, Florida and on May 16, 1959 while working as coach cleaner in the car shops at Hialeah she was injured.

On the night of October 4, 1961 at approximately 11:30 P.M. the claimant reported to her Foreman, Mr. M. C. Foster, stating to him that she had a statement from her doctor releasing her for full time regular work. The foreman informed her that he could not put her to work and that she would have to see the general foreman or assistant master mechanic. She then reported to the general foreman and was told by him that he could not permit her to return to work until he received instructions to allow her to come back and sent her to see the assistant master mechanic of which she did and was accompanied by her Local Chairman, Nola Pridgen, on October 9, 1961, and was told by him she could not return to work as he had orders not to work her as she had a 25% disability and the company had dismissed her which is verified by a statement from the claimant and her local chairman.

It was pointed out that the claimant was unable to be restored to the service since October 4, 1961, and that this dispute has been handled in accordance with the provisions of the agreement, effective September 1, 1949, as subsequently amended, with the proper officers of the carrier, including the highest designated carrier officer with whom such matters may be handled

maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

Award 3476 covered a similar case and following is excerpt from Opinion of Board therein denying the claim:

"We are of the opinion that the claim cannot be sustained. The claimant did not supply to the jury medical information that was labeled as conjecture, guesswork, or supposition. He sought to prove that never again would he be able to perform any laboring service in the railroad industry. Carrier offered no contrary medical testimony. The claimant succeeded in his proof. Since he was compensated for permanent disablement in this respect, we do not think claimant is entitled to escape the consequences of his successful endeavor by contending, in effect, that the basis upon which he obtained judgment from the carrier was all a mistake."

There is no merit to the claim and it 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 waived right of appearance at hearing thereon.

The Claimant, Coach Cleaner Mrs. Gussie M. (Williams) Cone, an employe for 18 years at Carrier's Hialeah Shops, Hialeah, Florida, sustained an on-duty injury on May 16, 1959, while alighting from a passenger coach.

The Claimant reportedly suffered injuries to her neck, back, and the left shoulder, arm, knee and leg.

In May 1960, the Claimant sued the Carrier and the Jury—in compensation for her injuries—awarded her damages in the amount of \$17,787.00, less the sum of \$2,366.39 in Railroad Retirement Benefits which had been paid to her.

The Claimant tried to work in 1960 but "had to give it up September 24, 1960 as she was not able to work."

On October 3, 1961, the Claimant's physician Dr. E. Smith, gave her the following statement:

"Re: Gussie Williams

"This patient has been released for full time regular work."

On October 4, 1961, at 11:45 P. M. the Claimant requested Car Foreman M. C. Foster to restore her to service but he declined to do so. Subsequent

similar requests to an ascending level of Carrier officials produced negative results.

The Claimant's contention that at each interview with Carrier officials she proffered to them. Dr. Smith's statement is denied by those officials.

The Claimant's duties—regarding which she testified at the trial "she was never able to do her work any more"—consist of cleaning the interior of passenger cars, ventilators, ceilings, overhead racks, and sweeping, mopping and vacuuming.

The record reveals that the Claimant does not have full use of her left hand, arm and shoulder and only has limited neck movement.

The Claimant's own physicians, Doctor Burbacher testified in court that the Claimant "had 15% permanent disability of her upper left extremity"; while Dr. Keedy stated that "she had a permanent disability of between 15% and 20% of the body as a whole, which would interfere with her normal activity";

The record also indicates that the Claimant stated that "with a weak left hand and arm it would be hazardous for her to get on and off cars with her work equipment, including mop, bucket, cleaning fluids, vacuum cleaner, * * *"

From the facts set forth above, the Board is convinced the Claimant could not satisfactorily and safely perform the duties of her car cleaner's position, and that the Claimant was not "wrongfully deprived of her service rights on and after October 4, 1961."

Accordingly, the Board must deny Part 1 of the claim and dismiss Part 2.

AWARD

Claim disposed of in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.