

Award No. 4619

Docket No. 4577

2-CRI&P-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the terms of the Physical Re-Examination Rule the Carrier improperly withheld Machinist Floyd R. Trunell from service for a period of ten (10) days from August 4, 1962 to August 14, 1962.

2. That accordingly the Carrier be ordered to compensate Machinist Floyd R. Trunell in the amount of ten (10) days pay at the prevailing rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Company hereinafter referred to as the carrier maintains a diesel locomotive repair shop at Silvis, Illinois.

On May 20, 1962, Machinist Floyd R. Trunell was granted a ninety (90) day leave of absence on account of sickness. At the time this leave was granted Machinist Trunell he held a regular assignment 3:00 P. M. to 11:00 P. M., Thursday and Friday rest days. On August 2, 1962 Mr. Trunell desiring to return to work and having been apprised of the fact that he had been displaced from his regular assignment during his absence reported to the shop and filled out the customary form to displace a junior employe, effective August 4, 1962. The two day interval between August 2 and August 4 was due to the fact that the position Mr. Trunell wished to place himself on was an assignment 7:00 A. M.-3:00 P. M. with Thursday and Friday rest days. Since August 2 fell on Thursday and August 3 on Friday (the rest days of the assignment desired by Mr. Trunell) Mr. Trunell wished to return to work on the first work day of the work week of his new assignment, hence he made his "bump" effective on Saturday August 4, 1962. After filling out the customary "bump slip" Mr. Trunell presented one copy to the committee as required by contract and was advised to present another copy along with his release from his personal physician Dr. Alberts to the supervision. Also one copy to the employe whom he was displacing. Upon presentation of "bump slip" and physicians statement by Mr. Trunell, without consultation and unknown to Local Machinists' Committee Mr. Trunell was ordered to report to Dr. De-Bourcy, company doctor for further examination. An appointment was made

3. On July 31, 1962, the Claimant's doctor, Jose M. Albert, placed this statement in the hands of the Claimant:

"TO WHOM IT MAY CONCERN

This is to certify that Mr. Floyd Trunell has been under my professional care and is released to return to work on August 3, 1962."

4. The Claimant brought this second letter to the general foreman's office on August 2, 1962, at the diesel pit, Silvis, Illinois, and advised him he wished to return to work Saturday, August 4th, his rest days being Thursday and Friday.

5. The general foreman appraised the man's physical condition and was convinced from his outward appearance that he still was a very sick man and in no condition to return to service as his presence on the Ramp would possibly endanger his own personal safety and the safety of others working with him.

6. The claimant was then sent to a company physician, Dr. H. C. DeBourcy, for a physical examination. His findings after examination on August 3, 1962, were as follows:

"Floyd Truenell (sic) was examined here on August 3rd and at this time it was felt that he was not ready for work. He was told to report to his doctor. I suggested an x-ray be taken and a report submitted to me before releasing him to work.

His examination report had been held until he or his doctor report. To date I have not heard from them."

7. On August 13, 1962, following another examination by a carrier's physician, the claimant was declared physically qualified and allowed to return to work August 14, 1962.

CARRIER'S POSITION: The board can readily see the carrier followed competent medical advice in accordance with the intent of the agreement and cannot be held to have acted in bad faith.

The only position the organization has is that the retroactive "omnipotence" of "Solomon" surpasses sound carrier logic or competent medical advice and agreement provisions.

This claim must 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.

An agreement effective May 1, 1941 provides that "no employe will be required to submit himself for physical re-examination" except in three specified situations. It then provides that, when the Carrier desires to have an employe re-examined accordingly, "The following procedure will govern:

"A Carrier representative will confer with the employes Local Committee, advising of their desire that a certain employe be re-examined, and the Committee will advise the employe involved of the carrier's request; the employe will, upon such advice, furnish the Carrier, through the Local Committee, with a certificate of re-examination from a physician of his choice showing his physical condition."

This procedure was not followed. When claimant advised the General Foreman of his desire to return to work after a leave of absence for illness, he was sent to a company physician for examination and the Local Committee was not advised thereof. This was a violation of the agreement and the fact that conformity to that agreement might have resulted in a longer withholding from work does not excuse the Carrier from compliance therewith. Thus the claim must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 11th day of December, 1964.