

Award No. 4700

Docket No. 4507

2-NYC-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL SYSTEM (NEW YORK DISTRICT)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the Carrier unjustly withheld Carman Dominick Pully from the service from November 16, 1960 to May 25, 1961.

2. That accordingly, the Carrier be ordered to compensate Carman Dominick Pully for all time lost account the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector—Repairer Dominick Pully, hereinafter referred to as the claimant, is regularly employed as such by the New York Central Railroad Co., hereinafter referred to as the carrier, at Weehawken, N.J.

On November 16, 1960, claimant was working as a car inspector and shortly after eating his lunch around 11:30 A. M., he became briefly faint and confused. Lead Car Inspector G. Fallen, noticed claimant did not appear well and immediately summoned claimant's daughter to the property to take him home. When claimant's daughter arrived he had recovered from his fainting spell and stated that he was allright. Claimant drove his daughter home and returned to his place of employment, but upon returning Foreman L. Schreiber refused to permit him to go back to work and ordered him to report to carrier's doctor for an examination.

On November 17, 1960, the following day, claimant reported to General Foreman J. F. Mizzi's office with a note from his personal physician, Dr. Frank Spano, stating that examination revealed his physical condition to be good and that he was able to perform his normal work.

General Foreman Mizzi refused to permit claimant to return to work and ordered him to go to Carrier's Dr. E. V. Bizzaro for examination, who after examining him referred him to a Neuro-Surgeon, Dr. G. H. Hyslop for further examination. Claimant was examined by Dr. Hyslop on November 21, 1960, wherein under the caption "OPINION", he states:

"No matter what might be found to be the cause of the brief

CONCLUSION: Upon advice of competent medical authority carrier removed and held the claimant from active service until such time when he was approved for return to duty by the proper medical authority. Carrier has shown that it has not acted in a capricious or arbitrary manner in its handling of the claimant. The carrier has shown that the claimant is responsible for wages lost through his delay in requesting an examination by a neutral physician, and not through a fault of the carrier.

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, while working as a Car Inspector, after eating his lunch became faint and confused. Lead Car Inspector Fallen noticed that Claimant did not appear to be well and called Claimant's daughter who came to the property to take him home. By the time she arrived Claimant recovered, drove his daughter home and then reported back to work. Foreman Schreiber refused to permit him to go back on the job and ordered him to report to the Carrier's Doctor for an examination. Claimant's doctor, after an examination, wrote a report declaring that he was able to perform his normal work. After examination by the Carrier's Neurosurgeon, he reported that Claimant was "disqualified for duty that would require exposure to elevation hazard."

In view of the conflict between the opinions of the doctors, and in accordance with a provision of the current agreement between the parties, the Claimant was sent to a neutral doctor. The neutral doctor reported that Claimant was physically able to perform the duties of his job. Claimant was restored to service on May 25, 1961. The Organization takes the position that the Carrier unjustly withheld Carman Pully from service from November 16, 1960 to May 25, 1961 and accordingly requests that the Carrier compensate Claimant for all time lost because of the aforesaid violation.

In order to sustain the claim in the instant case the Organization would have to meet its burden of proving that the Claimant was withheld from service as the result of arbitrary, capricious and discriminatory action on the part of the Carrier. There is no such evidence in the instant record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.