



Award No. 6310

Docket No. 6187

2-UP-EW-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Union Pacific Railroad Company improperly withheld Electrician J. A. Garcia, Los Angeles, California from service September 1, 1970 to November 5, 1970 account physical examination.

2. That accordingly, the Carrier be ordered to compensate this employe for all time lost for all regular assigned work days between the period of September 1, 1970 through November 4, 1970.

EMPLOYEES' STATEMENT OF FACTS: Electrician J. A. Garcia, hereinafter referred to as the Claimant, entered the service of the Union Pacific Railroad Company, hereinafter referred to as the Carrier, in the MP&M Department on October 12, 1965 at Los Angeles, California.

On May 27, 1970, the claimant received a medical leave of absence which covered the period through August 24, 1970.

On September 1, 1970, the claimant was released for duty by District Surgeon, J. M. Farris, Union Pacific Employees Hospital Association.

On September 1, 1970, the claimant reported for duty, but the Carrier refused to accept this release and sent the claimant to its Examining Physician at Los Angeles, Doctor E. L. Shultz, for examination. Doctor Schultz being absent from his office, a Doctor Putnam conducted the examination and released the claimant for duty. The carrier refused to accept the release, stating that Doctor Putnam was not their examining physician. Upon request by the claimant for the carrier to return this release to him, he was advised by District Foreman, H. Walters, that it was not available. Nor could the undersigned receive a copy of this release from the carrier or from Doctor Putnam.

On September 15, 1970, at 3:15 P.M., the claimant was again ordered to report to Examining Physician, Doctor E. L. Shultz, for examination by District

vision Awards 2653, 3930 and 4234, which have allowed only lost wages less outside earnings and/or unemployment benefits in such instances.

In summary, the Carrier has shown (1) that Claimant, in a state of mental instability, committed a serious irregularity involving a diesel locomotive on his rest day, and that his removal from service for medical reasons was fully justified; (2) that Carrier acted in good faith and within its prerogative in withholding Claimant from service pending receipt of conclusive medical findings by its own physician covering Claimant's improved physical condition and mental stability, and (3) that Claimant was restored to service promptly after the physician's report was received, and based on this showing the claim 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 has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

I recognize that the Carrier has the right to specify the physician who released the employe for duty, or withdraws employe from duty.

The Carrier did so designate when they sent the claimant to Dr. Schultz' office on August 31, 1970.

There is no place in the record where Dr. Schultz repudiates Dr. Putnam.

Dr. Putnam was a trusted agent, and a capable agent of Dr. Schultz. He examined the claimant for Dr. Schultz. He was the company physician through Dr. Schultz.

Carrier is ordered to compensate claimant for all time lost for all regular work days between the period of September 1, 1970 through November 4, 1970.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.