

Award No. 2041
Docket No. 1889
2-PRR-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current Agreement Machinist O. C. Jewett was unjustly dealt with when he was held out of service from January 18, 1952, to September 22, 1952, inclusive.

(2) That accordingly the Carrier be ordered to compensate the aforesaid Claimant for all wages or monetary loss he suffered as a result of being unjustly held out of service during the aforementioned period.

EMPLOYES' STATEMENT OF FACTS: Machinist O. C. Jewett, hereinafter referred to as the claimant, is employed by the carrier in the Maintenance of Equipment Department at Columbus, Ohio, appearing on the seniority roster with a machinist date of February 23, 1939, and a machinist helper date of October 1, 1924.

On or about December 28, 1951, the claimant became ill and reported himself off sick. On January 16, 1952, the claimant returned to duty. For the purpose of determining whether or not he was entitled to insurance benefits under the Voluntary Relief Department of the Pennsylvania Railroad, he was requested by the medical examiner to obtain a certificate from his attending physician as to the nature of his illness. This the claimant did, submitting such certificate dated January 15, 1952, from J. W. Miles, M.D., Columbus, Ohio, sometime between the dates of January 16, 1952 and January 18, 1952. A copy of the certificate of attending physician as submitted by the claimant from J. W. Miles, M.D., is submitted herewith and identified as Exhibit A. The claimant continued working until 2:30 P. M., January 18, 1952, when he was removed from service by his foreman on the recommendation of the carrier's Columbus Division medical examiner.

On January 21, 1952, Form R.D.—5 was issued over the signature of the master mechanic showing the claimant "Disabled" from January 18, 1952.

Under date of April 28, 1952, Superintendent V. R. D. forwarded to the superintendent and medical examiner of the Columbus Division, copies of a report showing the results of a clinical examination made by Doctors

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreements, which constitute the applicable agreements between the parties, and to decide the present dispute in accordance therewith.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of O. C. Jewett in the instant case.

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.

The parties to said dispute were given due notice of hearing thereon.

The claimant laid off sick on December 28, 1951, and returned to duty January 16, 1952. He was taken out of active service upon recommendation of carrier's medical examiner January 18, 1952. This action was based primarily upon a certificate issued by Dr. Miles, the claimant's own physician. The diagnosis by Dr. Miles stated—Possible Traumatic Epilepsy—Emotional Reaction.

It is our opinion that the diagnosis by Dr. Miles was ample justification for the carrier to hold claimant out of service, at least until the time of receipt of the report by Dr. Glass of examination given March 13, 1952. Claimant had been regularly assigned to the duties of operating a lathe, drill press and bolt threader. The carrier acted reasonably in taking claimant out of active service, considering the possibility of personal injury which might be initiated by his physical condition.

Claimant was later examined by Dr. Glass on March 13, 1952, and copy of the history and examination was sent to the carrier's doctor on April 3, 1952. The carrier's medical examiner believed that the report from Dr. Glass did not justify a return to duty for the claimant.

On January 28, 1952, a request was made to put the claimant to work under the provisions of Article 5-J-1, which article gives preference to light work to employes unable to handle heavy work.

The claim before us was not filed until September 23, 1952, the day after the carrier's medical examiner issued a certificate of ability to the claimant.

It is our opinion that the carrier did not act arbitrarily in the matter before us. While we are not qualified to weigh evidence of a medical nature, the record does indicate to us that the carrier was taking the safe course when it chose to hold the claimant out of service for some time following the examination by Dr. Glass. The report by Dr. Glass stated that there was little evidence of any impairment of function resulting from the head injury. We believe that the carrier did not act arbitrarily when it considered the claimant's medical history relating to some degree of emotional instability.

We believe that it would be unwise for this Board to substitute its judgment, in the instant case, for that of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.