

Award No. 2788

Docket No. 2559

2-Pull-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly withheld Cleaner Edward Wilkie from service from October 31, 1955, to July 17, 1956, inclusive.

2. That, accordingly, the Carrier be ordered to compensate Cleaner Edward Wilkie for all time lost as the result of its improper action.

EMPLOYES' STATEMENT OF FACTS: Cleaner Edward Wilkie, hereinafter referred to as the claimant, was employed by The Pullman Company, hereinafter referred to as the carrier, on August 26, 1919. Claimant is now employed in the capacity of cleaner at the Exeter Street Yards in Boston, Mass.

On October 31, 1955, the claimant was notified by telegram, while on his relief day, that he was being withheld from service because of his physical condition and would not be permitted to return to work until corrective action satisfactory to management had been taken.

The claimant, at great expense to himself, was given a physical by Dr. Harold S. Tannenbaum, who in turn had the claimant examined by Dr. Elihu I. Lewis and Dr. Henry L. Cabitt.

The reports of these three medical specialists are submitted herewith as Exhibits A, B, and C. These three reports were forwarded to Mr. C. E. Foutz, superintendent of yard of The Pullman Company under date of February 9, 1956 and a copy of that letter is submitted herewith as Exhibit D. It will be noted that all three of these specialists disagreed with the findings of the carrier's doctor, in that they agree the claimant is capable of carrying on his work.

the basis of his diagnosis of the claimant's physical condition, whereas claimant's physicians took the position he was able to perform his work. In remanding the case for decision by neutral medical authority, the Board stated as follows:

"From an analysis of the record the following is applicable to this class of case. At this time the claim for restoration to service for pay for time lost cannot be allowed. We remand the case to the parties for an impartial examination by competent medical authority or authorities selected by agreement between the parties to this dispute to determine the Claimant's physical fitness to perform the duties that he previously performed for the Carrier. This is in keeping with Awards 5055 and 6764.

Certainly, this Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the physical fitness of an employee to perform work. This statement appears in many awards of this Division."

CONCLUSION

In this ex parte submission the company has shown that on October 31, 1955, medical evidence in the company's possession, with specific reference to Wilkie's hypertension and defective vision, was such that he could not safely be permitted to work. Also, the company has shown that when a neutral physician selected by the parties to the dispute stated that in his opinion Wilkie's condition was under control and that the employee could properly be permitted to perform his duties as car cleaner, the company promptly returned him to work. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The claim that the company improperly withheld Car Cleaner Wilkie from service October 31, 1955-July 17, 1956 inclusive, and that Wilkie should be paid for all time lost as a result of this alleged improper action is without merit and 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.

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

The facts herein may be summarized in brief as follows:

Claimant Wilkie, who had been with the company thirty-six (36) years, applied for a pension in 1955 after he was over seventy (70) years of age. He was given a physical examination and after he withdrew his application for pension, continued to work until he was removed from service by the company on October 31, 1955. He was later examined by various doctors, including a special examination by Dr. Katz who had been selected as a

neutral doctor. He was returned to light work fifteen (15) days after Dr. Katz's report. He continued to be employed until his death which has occurred since his claim was submitted to this Division.

From all the conflicting medical evidence included in this docket, we are of the opinion that this is one of those instances where both parties followed a reasonable course in their selection of a neutral physician, and thereafter in adopting his recommendations, by returning the claimant to work. During the period while Wilkie's condition was in doubt, the carrier should not be penalized for following the safe course for the benefit of all concerned.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.