

Award 2819
Docket No. 2588
2-ACL-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Electrician R. G. Harris has been improperly held out of service from April 16, 1956, to December 17, 1956.
2. That the Carrier be ordered to compensate Electrician Harris for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. G. Harris, electrician stationed at Jacksonville, Florida, hereinafter referred to as the claimant, with seniority date of June 25, 1952, asked for, and was granted, leave of absence beginning October 19, 1954 so that he could obtain treatment at the Central Florida Tuberculosis Hospital at Orlando, Florida. Claimant was admitted to the State T. B. Hospital at Orlando, Florida, on November 22, 1954, given treatment, and released November 19, 1955 as cured. Claimant reported back to the Duval County Board of Health and on January 20, 1956 was released and advised he was completely well and able to return to normal life.

After further recuperating claimant contacted carrier's Master Mechanic Gibbs on March 24, 1956 in regard to returning to work and was advised that he would be sent to company Doctor L. S. Lafitte for examination before being allowed to return to work. Claimant reported to Dr. Lafitte same date for examination. A statement by the claimant in regard to the foregoing is submitted herewith and identified as Exhibit A.

Under date of April 4, 1956, Dr. Herbert L. Corse of the City-County Tuberculosis Clinic addressed to the carrier's Dr. L. Sydnor Lafitte, copy submitted herewith and identified as Exhibit B, in which the following statement is made:

Almost directly in point is Third Division Award 2096, with Referee Ernest M. Tipton. This case was brought to the Board on the claim that carrier denied a Bridge and Building Department laborer the right to fill an assignment due to his physical condition. The following language from the decision of the Board is pertinent:

"On May 13, 1940, claimant was warded position as painter, working on the Ohio River Bridge at Metropolis, Illinois. Two days later, a physician advised claimant's employing officer that claimant was not a safe employe for painting work on that bridge until he had recovered sufficiently from an injury received on March 16, 1940, which was diagnosed as synovitis of the right knee. The physician advised that he be permitted to remain at work in Aurora as there was no objection to his working on the ground or with only a minimum amount of climbing. Acting on this advice, the Carrier did not permit him to paint the bridge.

The record fails to show the advice given by the physician was given in bad faith. The Carrier is entitled to hold an employe out of service on the bona fide advice of a physician that he considers the employe unsafe for service. (See Award No. 728)

Under the circumstances involved in this claim, the Board holds there was no violation of the agreement."

This is not a discipline case as claimant was merely held out of service until carrier was satisfied that he was physically capable of performing his duties without danger to himself, to his fellow employes or to the carrier and the public in general. No provision of the applicable agreement has been violated and the single question involved is whether carrier was justified in relying on the best obtainable medical advice and denying claimant further employment until he had more fully recovered his physical stamina and health. Entirely aside from the well-being and safety of the employe concerned, the carrier is entitled to hold an employe out of service on the advice of competent medical opinion where the question of safety to the public is involved. There is no indication whatever that the carrier acted arbitrarily or unjustly and it was rightfully entitled to determine for itself the extent of claimant's recovery and the probability of recurrent illness resulting from a case of far advanced pulmonary tuberculosis.

It is respectfully submitted that the decisions of the Adjustment Board fully support the action taken by carrier and that 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 Board has jurisdiction over the dispute involved herein.

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

Claim is here made in behalf of Electrician R. G. Harris for pay for all time lost account of his being improperly held out of service between April 16, 1956 and December 17, 1956.

This dispute concerns the physical condition of claimant. The facts are not in dispute. Claimant entered Florida State Tuberculosis Hospital on November 22, 1954 for treatment of advanced tuberculosis. Removal of the upper lobe of claimant's right lung was performed on June 13, 1955, followed by continuous hospital treatment until his discharge on November 19, 1955. Thereafter claimant was instructed to receive out-patient treatment from the Duval County Health Department Clinic for a period of six months. Such out-patient treatment was administered for about five months. Claimant advised the carrier that he desired to return to work on April 16, 1956.

The carrier declined to return claimant to service. This decision was based on actual hospital records as interpreted and construed by one Dr. Laffitte, a carrier medical examiner and by the Chief Surgeon of the carrier.

The record reveals that one Herbert L. Corse, a physician and Director of the Tuberculosis Clinic, Duval County Health Department, on April 4, 1956 advised Dr. Laffitte, carrier medical examiner, in part as follows:

"In view of this data, I feel that Mr. Harris is able to resume full activity with no limitation to work capacity."

Under date of April 16, claimant was advised by one Dr. Benjamin L. Brock, Medical Director of the hospital, in part as follows:

"In a letter addressed to Dr. Laffitte, I stated that it was my belief that if you have shown no changes in your x-ray since discharge from the hospital that you should be able at this time to assume your duties as electrician for the Atlantic Coast Line Company."

It is further noted that during the period of time covered by this claim, claimant was apparently employed by a ship building concern as an electrician.

Neither the Medical Examiner nor the Chief Surgeon of the carrier based his decision, which led to the denial of claimant's request to return to service, on their actual physical examination of claimant. Such decision was evidently predicated upon their analysis of claimant's hospital reports and their evaluation of the statements from Doctors Brock and Corse.

A carrier is wholly justified in establishing such physical standards for employment as its judgment decrees. While admittedly claimant's employment by a ship building concern during the time in question is not indicative, in and of itself, that claimant was physically fit to return to service, such fact, when considered in conjunction with the above quoted excerpts of medical opinions, which were based on examinations and treatment by two physicians, are sufficient to lend doubt as to the absolute accuracy of the Chief Surgeon's diagnosis and prognosis, which was admittedly reached without an actual physical examination of claimant.)

We are of the opinion that carrier erred when it failed to have its medical examiner verify his conclusion by actual physical examination. This, the claimant was justified in expecting, and the carrier's failure to provide such an examination, when considered in light of the above recited facts, is sufficient to sustain a finding that carrier improperly held claimant out of service and that claimant should be compensated for all time lost, less any sums earned in other employment.)

AWARD

Claims disposed of as per above findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 14th day of April, 1958.