

Award No. 3084

Docket No. 2800

2-ACL-SM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the agreement the Carrier improperly held Sheet Metal Worker W. C. Gaines out of service from December 19, 1956 to January 3, 1957 in violation of General Rule No. 21 Shop Craft Agreement.

2. That the Carrier be ordered to compensate Sheet Metal Worker W. C. Gaines for time lost in being held out of service from December 19, 1956 through January 2, 1957.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker W. C. Gaines, hereinafter referred to as the claimant, was and is still employed by The Atlantic Coast Line Railroad, hereinafter referred to as the carrier, at their Waycross Georgia Shops. On the morning of November 24 at about 9:00 A.M., the claimant became ill and with permission of foreman checked out. On arrival home he became worse and his wife called in family physician around 11:00 A.M., who upon examination found that the claimant was suffering from an acute appendicitis, knowing that the claimant was covered under the hospital plan of the company, his family physician suggested that he go to that hospital. Several attempts were made to get in touch with the company doctor so that he could be admitted to the hospital without avail. He was admitted to the Ware County Memorial Hospital also located in Waycross and was operated on at 12:30 P.M. The claimant made claim to Hospital Insurance Plan for reimbursement of hospital bill and several letters of controversial nature were exchanged between company doctor. The claimant was not reimbursed for the hospital bill.

On December 14, 1956, family physician, who performed the operation and attended the claimant, gave him letter, copy submitted herewith and identified as Exhibit 1, stating that he had recovered and could return to

Again, Third Division Award 2886, with Referee Henry J. Tilford assisting, denied claim for time held out of service for a warehouseman-clerk and the Board rendered its decision as follows:

“Since where the question of personal safety is involved the Carrier is entitled to be ‘abundantly precautionous’ (see Award 875) the Board is of the opinion that the Carrier was justified in its action.”

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.

Parties to said dispute were given due notice of hearing thereon.

Claim is here made in behalf of Sheet Metal Worker, W. C. Gaines, for pay for time lost in being held out of service from December 19, 1956 through January 2, 1957.

Claimant became ill on the morning of November 24th and was taken to the hospital and operated on by his family physician. Claimant, through his doctor and members of his family, attempted to gain admission to the Company hospital without success.

On December 14th the family physician, who performed the operation, gave claimant a letter stating that he had recovered and could go to work on the 19th of December. Claimant presented himself to the Company doctor for an examination in order to obtain Form 38 to permit him to return to work. The Company physician made no examination of the claimant but instead wrote to the Chief Surgeon for instructions. The Chief Surgeon on December 19, 1956 directed Dr. Jordan as follows:

“I wish you would check him and, if his scar is all healed, and you think that he is now able to carry on his regular duties, then you may go ahead and issue him a 38.”

Despite the fact that claimant had submitted to the Company physician the statement of his physician that he was able to return to work and despite the instruction of the Chief Surgeon, the Company physician did nothing. He made no examination until January 2nd, after which he permitted the claimant to return to work. Dr. Jordan ignored the instructions of his own chief surgeon. This in spite of the fact that three physicians, including the surgeon who performed the operation had certified that claimant was fit to return to work.

We are of the opinion that the failure of the Company physician to examine the claimant when he received instructions from his superior on December 19th to do so and his failure to examine the claimant and order him back to work until January 2nd was arbitrary and capricious.

We do not find that General Rule 21 Shop Craft Agreement was violated. Nevertheless, the claimant has seniority rights under the agreement and we believe that the record is sufficient to sustain a finding that the 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

Claim 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 19th day of January, 1959.