

Award No. 3494

Docket No. 2964

2-GN-F&O-'59

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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Mrs. Ephumia Steele was unjustly removed from service on January 3, 1957 following a physical examination, which took place December 5, 1956.

2. That accordingly the Carrier be ordered to restore the Claimant to her former position and reimburse her for all time lost from January 4, 1957, also costs incurred by Mrs. Steele for examinations conducted by her personal physician.

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.

The original claim of employes asserted that Ephumia Steele was unjustly removed from service January 3, 1957, and that she be restored to service with pay for all time lost and reimbursement of her medical costs.

Mrs. Steele was working at Spokane, December 7, 1956, when she was given a routine physical examination by the carrier's Spokane doctor. She continued to work until January 3, 1957, when she was removed from service under orders of the shop superintendent, reflecting advice by the chief surgeon,

that she had "failed the physical examination in the following respects: 'Not approved until well'. You will be withheld from service until such time as you can pass a physical examination which meets the approval of the chief surgeon."

The organization contends that Rule 32 (A) has been violated in that Mrs. Steele has been unjustly treated.

This board remanded the docket to the parties for further progression to establish facts; to that end we recommended a tri-partite medical examination. (Award No. 3178.) Under date of April 20, 1959, we ordered our award to be made effective. On August 24, 1959, the brotherhood wrote the company, mentioning a June 9 conference between the parties.

On August 27, 1959, the company replied stating that Mrs. Steele had been given a physical examination on August 6, 1959, and had been restored to service on August 24, 1959.

We also note that under date of June 1, 1959, the company expressed its willingness to arrange for a tri-partite medical examination, which was accepted by the General Chairman of the Firemen and Oilers Organization.

Then on November 16, 1959, the employes requested this division for an interpretation of Award No. 3178, asking if the words of our award "provide that a tri-partite medical examination be arranged to establish the facts on which findings could be based."

Our reaction to that question was affirmative, and we reiterated that a tri-partite medical examination be arranged. In our interpretation we declined to rule on anything more than the bare question posed, and closed with the observation that the cause was still remanded to the parties for further progression. The parties have had their opportunity to settle the case and have failed to agree.

Now the docket is again before us with the employes requesting a final decision on the merits of the dispute. From the current correspondence, it appears that the organization continues to demand pay for Mrs. Steele and that the company replies that it has complied with Award No. 3178, because we did not **order** an examination, and had only "**recommended** that a tri-partite medical examination be arranged."

We have set out our review of this entire docket because it is necessary to a full understanding of this atypical dispute. Here the parties have sparred with each other while the employe waits, and when this board, in trying to direct a solution, stays within its legal limits by recommending an acceptable method, we are confronted with further delay, and ultimate evasion.

We have concluded that the carrier's assumption that its medical examination would obviate the necessity for the tri-partite medical examination we recommended, is not valid. We also note that the examination of August 6, 1959 resulted in a favorable decision for the employe; but we find nothing to explain the failure to follow through on the accepted examination proposal of June 1, 1959. Nor is there any expression on when Mrs. Steele had become able to pass the physical examination to the approval of the chief surgeon, as originally suggested. Purely in the interest of settling this impasse, meanwhile admitting that the facts are generally fuzzy, we note one salient date. On April 20, 1959, this board notified the carrier of its obligation to place

our award in effect. By rejecting our recommendation, any delay thereafter in granting the employees rights would be unjust dealing as anticipated by the rule cited.

AWARD

We award that Ephumia Steele shall be paid for the time from April 20, 1959, to August 24, 1959.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1960.