

Award No. 3870

Docket No. 3749

2-SLSW-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O. (Machinists)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier was without authority under the controlling agreement to withhold Machinist Helper G. C. Blankenship from service October 25, 1958 through October 29, 1958.
2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe in the amount of five (5) days' earnings at his straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Under date of July 2, 1958, a letter was directed to Machinist Helper G. C. Blankenship, hereinafter referred to as the claimant, to report to a doctor of his own choosing for the purpose of undergoing a physical re-examination under the provisions of Rule 41. The claimant complied with the instructions, and under date of July 8, presented officers of the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, with a written report of the doctor's findings. This examination was made by his family doctor. Then under date of July 9, the general foreman addressed another letter to claimant, stating that the report from his family doctor was not satisfactory to the carrier, and it was therefore necessary for him to report to a company physician for further examination. On July 17, claimant reported to the Trust Hospital at Texarkana, and submitted to an examination by the carrier's chief surgeon. The carrier's doctor in effect verified the findings of the first doctor, adding that in his opinion several weeks of rest was indicated. On July 23, the claimant was released from the Trust Hospital, and instructed to get all rest possible, returning for a progress examination in a few weeks. On September 2, a further examination was conducted by the carrier's chief surgeon. Then under date of September 15, the undersigned received a written report concerning the physical condition of the claimant. At that time it was determined that in two, perhaps three weeks, depending upon his own evaluation of his condition, claimant could return to service. It was further written in the report that claimant should be given the lightest assignment avail-

The claimant's return to service November 1 was as soon as could be arranged, and he is not entitled to any payment because of not working prior to that date.

It has been held in a number of awards that a carrier has the right to require physical examination of an employe when it has reason to believe that his physical condition does not permit him to safely perform his assigned duties, and that the employe is not entitled to pay for time lost as a result of disqualification. Attention is directed to Award 1397 (Referee Chappell) denying claim of a machinist that he should be paid for time lost as result of not being permitted to immediately resume service when he reported for work after treatment for a heart condition. The findings, in part, are quoted below:

" * * * claimant did not report for work until July 21, 1949, and there is no evidence which could sustain a finding that he was theretofore restrained from doing so by the carrier. He was then examined by a carrier's physician and approved for return to work. Thereafter on July 25, 1949, he reported for work and was instructed to see the chief surgeon who having knowledge of claimant's medical history had not yet approved the physician's report. He did, however, after an examination, approve claimant's return to work in a position where he would not be required to climb high places. Such work not being then available, it was finally agreed by the chief surgeon that if one of two named physicians would examine claimant he would abide their decision. One of such physicians, a specialist, who had theretofore treated claimant for a heart condition in August, 1944, examined him on September 13, 1949, and on September 15, 1949, reported that claimant then had a mild angina pectoris and was very nervous from doing nothing, but would likely feel better if he did some work and should be put back to work. Upon receipt of such report the carrier kept its agreement and returned claimant to work on September 23, 1949.

In light of the record before it the Division cannot conclude that the carrier acted arbitrarily or unjustly. Under the circumstances it was rightfully entitled to know the extent of claimant's recovery and the degree of remoteness or probability of recurrent attacks after an undisputed illness of a serious character theretofore first manifested in August, 1944. See Awards 472, 481, 998, 1134 and 1288.

For the reasons heretofore stated the Division concludes that the claim should be and is denied."

As in that case, the carrier here was entitled to know the extent of the claimant's recovery, and did not act arbitrarily or unjustly in not allowing him to return to work without approval of the chief surgeon nor without an understanding that light work was not available.

Clearly the claim is not supported by the rules and is without merit, and carrier respectfully submits 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 waived right of appearance at hearing thereon.

The instant claim is on behalf of Machinist Helper G. C. Blankenship for compensation for time lost from October 25, 1958, through October 29, 1958. For the reasons hereinafter stated, we are of the opinion that the claim is without merit.

On or about July 8, 1958, the Claimant submitted to the Carrier a report of his family doctor stating that he had evidence of a mild coronary artery disease and that, as a result, excessive exertion or heat should be avoided. Since this report was not satisfactory to the Carrier, the General Foreman required the Claimant to take an examination by the Carrier's doctor in accordance with Rule 41-2 (b) of the labor agreement. This Rule also prescribes that the Carrier's doctor shall prepare a detailed written report of his findings and that a copy thereof shall be given to the employe and his representative. The latter provision implies, of course, that the original of the report shall be given to the Carrier. The record does not show whether the Carrier's doctor complied with such procedural requirements. However, this possible omission did not adversely affect any contractual rights of the Claimant because it appears from a letter which the Carrier's doctor wrote to General Chairman Nesbitt, the Claimant's representative, on July 29, 1958, that his physical condition was such as to prevent him from working because of a heart disease and possible stomach trouble and that it would take some time to evaluate him to see what kind of work he could do.

The Chief Surgeon's letter, dated September 15, 1958, and again addressed to the General Chairman was not, however, a report within the purview of Rule 41-2(b) since the Carrier had requested no medical examination at that time as contemplated in said Rule. The letter was, in fact, a private communication to the Claimant's representative containing a general progress report regarding the physical condition of the Claimant. Hence, the procedural requirements of Rule 41-2(b) as mentioned hereinbefore did not apply to it.

The evidence on the record considered as a whole proves that the Carrier had no knowledge of said letter until the Roundhouse Foreman was confronted therewith shortly after the Claimant had reported for work on October 22, 1958. The letter did not contain an unqualified and definite medical release but rather expressed a belief on the part of the Chief Surgeon that the Claimant could return to work in a couple or three weeks if he subjectively felt that his physical condition would permit him to do so. Actually, the Claimant did not feel himself sufficiently recovered for active service until about five weeks had elapsed. Under these circumstances, the Carrier was, in the interest of the Claimant's own safety as well as that of his fellow employes, rightfully entitled to request a medical report containing an objective and precise appraisal of his physical condition as of the time he reported for work. See Second Division Award 1397 and other Awards cited therein. Consequently, we are unable to find that the Carrier acted arbitrarily, capriciously, or un-

reasonably when, upon being shown the Chief Surgeon's letter of September 15, 1958, it cancelled the arrangements previously made for the Claimant's return to work and requested a medical report to show that he had sufficiently recovered. However, we take notice of the fact that the Claimant was returned to work after the Carrier received the Chief Surgeon's letter of October 27, 1958.

The Claimant also rests his case upon Rule 16 which prescribes, in essence, that long-service employees who have become unable to handle heavy work will be given preference to light work available in their line or in other lines, if practicable. The Carrier has denied that any light work was available for the Claimant at the time he reported for work and its denial is supported by a detailed statement included in a letter, dated August 2, 1960, from former General Foreman Scott to the Carrier. There is nothing in the record before us which would adequately refute said statement. In the absence of available light work, the Carrier was not obligated to create such work for the Claimant. See Second Division Award 3183.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1961.