Award No. 4360
Docket No. 3967
2-CRI&P-CM-'63

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. 6, RAILWAY EMPLOYES DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement Carman Roy W. Crump was unjustly withheld from service from November 3rd to November 25, 1960.

(2) That accordingly, the Carrier be ordered to compensate Carman Roy W. Crump for all time lost.

EMPLOYES' STATEMENT OF FACTS: Carman Roy W. Crump, hereinafter referred to as the claimant, was employed by the Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the carrier, on December 10, 1951 at Topeka, Kansas, a small shop employing approximately six carmen. There is no supervisor employed at Topeka, Kansas. The employes work under the jurisdiction of a lead carman.

On November 3rd, 1960 the claimant assignment was 8:00 A. M. to 12:00 A. M., 12:30 P. M. to 4:30 P. M. on the Repair Track with rest days of Tuesday and Wednesday.

On October 29, 1960 the claimant became ill after working six and one half hours in the rain on the repair track. He informed the lead carman at 3:00 P. M. he was going home because of this illness. The claimant remained home October 30, and 31, 1960 which were regular days of his assignment and November 1 and 2, 1960 which were his assigned rest days.

On November 3, 1960 the claimant reported for work at his regular time and was informed by Lead Carman Pressgrove that Master Mechanic Gann had called from his office in Kansas City, and instructed him to not allow the claimant to return to work until he obtained a release from the company doctor at Topeka, Kansas.

The carrier has refused to adjust this dispute and the agreement effective October 16, 1948 as subsequently amended is controlling.

In view of the undisputed facts present in this case, and further because Rule 34 of the applicable agreement expressly sanctions the action taken by carrier in this case, the claim must be denied.

Carrier respectfully requests your Honorable Board to so hold.

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.

This case is a companion case to the one submitted to us in our Docket 3968. We disposed of that case in our Award 4359. In the interest of brevity, said Award as well as the stenographic transcript of the investigation hearing held on November 18, 1960, are included herein by reference and made a part hereof.

In the instant case, the Claimant requests compensation at the pro rata rate fo the period from November 3, 1960, to November 25, 1960, during which he was not permitted to work.

At the outset, we note that the record is devoid of any evidence or indication that the Claimant was ever suspended from service prior to his dismissal because of the charges filed against him by the Carrier under date of November 8, 1960, except during the time consumed by the investigation hearing. Apart from said exception, he was prohibited from returning to work solely because of the Carrier's concern for his physical condition until it was determined that "it was unquestionably safe to do so" (Carrier's submission brief, p. 4). It is self-evident that such prohibition was not a disciplinary suspension within the contemplation of Rule 34 of the applicable labor agreement. In addition, master mechanic J. W. Gann has expressly stated that he did not demand a re-examination of the Claimant but merely requested a release from the company doctor after it had become known that the Claimant was shot in the right side on the night of October 28, 1960 (letter dated November 29, 1960, from Gann to local chairman B. Saunders). Since Gann has disclaimed any intention to require a re-examination of the Claimant, the Memorandum of Understanding regarding Physical Re-Examination of Employes, effective as of May 1, 1941, is not applicable here.

However, the record discloses that the Claimant was involved in a shooting incident in which he was shot in the right side. He was taken to a hospital where he received medical treatment. He left the hospital on his own volition before he was duly released and reported for work about eight hours later. After having worked several hours, he became sick and went home.

Under these circumstances, the Carrier's right to request medical evidence that it was safe to permit the Claimant to return to work cannot be doubted even though the labor agreement does not contain an explicit provision to such effect. As pointed out hereinbefore, Gann requested a release from the company doctor. At the investigation hearing, the Claimant testified that

he tried to get an appointment with the company physician Dr. Marshall on or about November 3, 1960, but that the latter told him he would have to get permission from Gann before he could examine the Claimant (Carrier's Exhibit "A" in Docket 3968, p. 6). The Claimant also testified that he contacted Dr. Marshall after November 3, 1960 but was told he could not get an appointment because the doctor did not have time (ibid., p. 6, 7). There is nothing in the record before us which would in any way contradict the Claimant's testimony. Furthermore, there is no evidence that Gann authorized Dr. Marshall on or about November 3, 1960, to examine the Claimant. Thus, the Claimant's failure to submit a release from the company doctor was initially caused by Gann's omission to authorize an examination by Dr. Marshall and later on by the latter's lack of time, or, in other words, by reasons beyond the Claimant's control. Accordingly, we are of the opinion that the Claimant was unjustly dealt with within the purview of Rule 32 of the labor agreement when the Carrier did not permit him to return to work during the period from November 3, 1960, until November 25, 1960, apart from the time consumed by the investigation hearing. As a result, the Claimant is entitled to compensation at the pro rata rate for all time lost during said period, except for the time spent by him in attending the investigation hearing. See: Award 4334 of the Second Division. From said compensation, there shall be deducted any compensation which the Claimant may have earned in other gainful employment during the period in question.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1963.

LABOR MEMBERS' CONCURRING OPINION TO AWARD 4360

Our concurrence is restricted to the holding that "the claimant was unjustly dealt with within the provisions of Rule 32 of the labor agreement."

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink