

Award No. 4609

Docket No. 4532

2-IT-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier failed to comply with the procedural provisions of the National Agreement of August 21, 1954.
2. That the Carrier improperly held Carman George Dussold out of service June 10 through July 2, 1962.
3. That accordingly, the Carrier be ordered to compensate Mr. Dussold in the amount of eight (8) hours at the straight time rate of pay for each day in this period, minus the rest days of his position.

EMPLOYEES' STATEMENT OF FACTS: Carman George Dussold, hereinafter referred to as the claimant, is employed by the Illinois Terminal Railroad Company, hereinafter referred to as the carrier, at McKinley Junction yards. He was assigned to a position as oiler up to and including June 8, 1962, at which time this job was abolished.

The claimant was not permitted to place himself on the position of his choice which was being held by a junior man, until July 3, 1962.

Claim for pay was made for days lost in this period and appealed through all channels up to and including Supervisor of Personnel Mr. A. E. Mester who is the highest officer designated by the carrier to handle such disputes. The claim was not denied until November 21, 1962, sixty-two days after the date of appeal to his office. The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the foregoing facts reveal that the Carrier failed to comply with the procedural provisions of Article V, Section 1, of the August 21, 1954 Agreement, reading:

Supervisor of Personnel Mester received the appeal through the mails. This is all that is required for a timely declination. See Second Division Award No. 3656, Referee Lloyd H. Bailer, who says:

"The Organization contends this claim must be allowed because the Carrier's final denial thereof was not timely made on the property. On the basis of the facts set forth in the record, it appears that the Carrier's highest officer designated to handle appeals made denial of this claim within sixty days from his knowledge of the appeal resulting from receipt thereof through the mails. We therefore hold that this dispute is properly before us on its merits."

There has been no default by the carrier under the time limit on claims rule and, therefore, claim should be decided on its merits.

Petitioner has been very sketchy in their handling of the claim on its merits. General Chairman Wheeler in letter of July 20, 1962 to General Superintendent of Motive Power Leppert indicates that carrier violated a memorandum agreement, effective October 2, 1951, and titled "Physical Re-Examination of Employees Subject to the Shop Crafts Agreement." Such Memo Agreement effective October 2, 1951. The very title of the memo agreement indicates that it has no application in the current dispute. There was no re-examination of Mr. Dussold involved in the instant dispute. He had been off from work some eleven months during 1961 with a heart condition which condition claimant admits in his letter of May 8, 1961. On February 8, 1962, his own personal physician, whom he chose of his own free will to treat him for his heart condition, wrote us to the effect that if we had an oiler job available for claimant to work, his physical condition was such as to allow him to work such job. We had an oiler's job and allowed Mr. Dussold to work it until it was abolished, when we told claimant to go back to his doctor and bring a statement to us as to whether his physical condition was such that he could work other carmen jobs. This should have been a simple matter for claimant since his doctor would know his condition and should have been in a position to easily furnish such statement and in fact very simply claimant did obtain a statement to this effect after he had elected to sit back and do nothing for 22 days. As soon as we received the statement of claimant's doctor, we put him to work. Carrier is in no way liable for claimant's loss of work and claim has no merit and should be denied.

Since this is an ex parte case of the organization, this submission has been prepared without seeing the employees' statement of facts or their position and Carrier reserves the right to make further statements when it is informed of petitioner's complete position; and carrier request opportunity to answer in writing any allegations not answered by this submission.

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 employees 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.

On June 8, 1962, claimant's job as an Oiler was abolished and he was not permitted to place himself in another position, held by a junior employe, until July 3, 1962; he seeks pay for the work days lost and alleges that he was improperly withheld from service.

The facts presented indicate that claimant, of his own volition, delayed securing a medical clearance for performing heavier work—he previously having had a heart attack.

After disallowance by the Carrier's General Superintendent, the claim was appealed to the highest officer handling claims in an appeal letter dated September 20, 1962. Due to an intervening weekend, the appeal letter was received by the Carrier on September 24, 1962. The claim was denied in writing in a letter dated November 21, 1962. No issue is raised as to the date of receipt of the letter denying the claim.

The Employes allege a violation of Article V, Section 1, of the August 21, 1954 Agreement between the parties and urge payment of the claim on a procedural basis as well as on the merits.

Award No. 3690 of this Division, inter alia, says, “. . . Webster's New Collegiate Dictionary defines the verb 'notify' as meaning 'to give notice to; to inform.' One is not informed—notice is not given to him—until he receives it.”

Applying the reasoning and definition found in Award No. 3690, the Employes' procedural argument is erroneous in our opinion, because the claim before us was denied by the highest officer handling claims for the Carrier within 60 days of his having been “notified” that an appeal was being made to him.

Since the claimant voluntarily delayed getting a release from his own or the Carrier's doctor so that he could perform heavier work, after having been restricted by his own doctor in the type of work which he could perform, we do not find that he was improperly held out of service. His claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.