Award No. 4842
Docket No. 4715
2-NYNH&H-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the current agreement, Rule 20, 28 & 44, the New York, New Haven and Hartford Railroad Company deprived Sarah McGowan, Coach Cleaner, of her rightful earnings from May 27th to June 6, 1962.

2. That the New York, New Haven and Hartford Railroad Company ordered Sarah McGowan, Coach Cleaner, to report for a physical examination at New Haven, Connecticut, on May 22, 1962 and has refused to pay her for travel time consumed and reimbursement of meal expenses incurred.

3. That accordingly, the New York, New Haven and Hartford Railroad Company be ordered to compensate Sarah McGowan, Coach Cleaner, eleven (11) days pay, May 27, 1962 to June 6, 1962, at the prevailing rate of pay and one (1) day's pay and reimbursement expenses incurred for meals for May 22, 1963.

EMPLOYES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company, hereinafter referred to as the carrier, operates a passenger car yard facility at South Boston, Massachusetts, where Sarah McGowan, hereinafter referred to as the claimant, is employed as a coach cleaner. Because of an injury the claimant was out of active service of the carrier for an extended period of time.

On or about April 20, 1962, the claimant reported to General Foreman T. L. Gorman, at the South Boston Passenger Car Yards, that she was ready to return to and ably perform her regular duties as a coach cleaner.

The claimant was instructed by General Foreman T. L. Gorman, to report to the company doctor, Dr. Fischer, at New Haven, Connecticut, on April 24,

longer binding on the party who makes it; and, in law, evidence of such offer is not permitted to be introduced. When the Brotherhood rejected the offer of compromise, it did so at the risk of losing its entire claim, when presented to this Board . . .' "

And Third Division Award No. 2863 (Youngdahl)

"It is contended that because the Carrier on the property offered to return employe without pay that he is at least entitled to that consideration now. If this was an offer of compromise it could not now be considered. Award 2283 . . . To force Carrier now to extend this same leniency, . . . would it seems to us, be an improper substitution of our judgment for that of Carrier."

For all of the reasons contained herein we respectfully submit that the claim should be denied in its entirety.

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.

When Claimant offered to return to service after an accident as a result of which she had claimed total disability, the Carrier was clearly entitled to request an examination to determine her fitness for service. She reported to the doctor on April 24, 1962, and was found unfit for service, apparently because of a recent home accident, but was told that she would be re-examined in thirty days. Pursuant to a later notice she reported for re-examination on May 22nd and was found fit for service, but with the notation "no significant climbing allowed." On Friday, May 25th, she stated that she was ready to return to service on Sunday, the 27th, but because of the doctor's ambiguous reference to climbing was not put to work until June 6th.

No claim is made relative to the examination on April 24th, but pay and meal expenses are claimed for the re-examination on May 22nd, on the ground that it was service for the Carrier and should be compensated. She was not in the Carrier's employ on either date; both examinations were for her own benefit to establish here recovery from disability and here fitness for re-employment. No service was performed for the Carrier on either day, and no rule in the contract provides for either pay or meal allowances for them.

It is not apparent why these examinations could not have been made nearer to Claimant's South Boston place of employment than New Haven, Connecticut; but the record does not indicate that she made any objection, or that she requested that the examinations be made closer to home.

But Claimant was not responsible for the ambiguity in the statement by Carrier's doctor, nor was she responsible for Carrier's delay in ascertaining its meaning before restoring her to work on June 6. There is no indication that

her condition changed during that time, or that clarification could not have been obtained on Friday, May 25th, when she reported ready for work, or that the position was not available for her on Sunday, the 27th. From the morning of May 27th, ten days elapsed before June 6th, two of which would have been rest days. Claimant should therefore be paid for eight days at pro-rata rate for the position.

AWARD

Claim 2, if intended to assert that the Carrier's refusal of pay and meal expenses for May 22nd was wrongful or contrary to the Agreement, is denied.

Claims 1 and 3 are sustained to the extent stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

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