

**Award No. 5173
Docket No. 4996
2-RDG-CM-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**The Second Division consisted of the regular members and in
addition Referee Harold M. Weston when award was rendered.**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the carrier unjustly and improperly withheld Carman Painter Peter Campbell from service October 12, 1964 through February 9, 1965.

2. That accordingly, the Carrier be ordered to make Peter Campbell whole, by paying him 8 hours' pay each day he was withheld from service, starting October 12, 1964, up to and including February 9, 1965, the day he was restored to service.

EMPLOYES' STATEMENT OF FACTS: Carman Peter Campbell, hereinafter referred to as the claimant, is regularly employed by the Reading Company, hereinafter referred to as the carrier, at its Wayne Junction Electric Car Shop, with work week of Monday through Friday, rest days Saturday and Sunday, with seniority date as carman painter of 10-5-53.

On or about March 13, 1964, claimant suffered a Cardiac Infarction and was hospitalized for same under the care of Doctors B. D. Detrick and John Atkinson. Claimant made excellent recovery, and in October 1964, claimant's doctor's certified that the Infarction was healed and inactive and pronounced him physically fit to resume his normal work as a carman painter.

On Thursday, October 8, 1964, claimant advised General Foreman C. D. VanSeiver that he would report for work Monday October 12, 1964, and was advised to report to carrier's Medical Examiner and secure a Return to Duty Form. Claimant presented himself to the Medical Examiner on Friday October 9, 1964 and furnished him with copy of statements from Doctors B. D. Detrick and John Atkinson, certifying that he had recovered from a Myocardial Infarction and could return to work 10/12/64, copy of which is attached as Exhibit A. The Medical Examiner refused to issue a Return to Duty Form, and accordingly, claimant was withheld from service.

The Organization not only attempts to benefit from rules which it had constantly repudiated, but it also failed to follow the prescribed procedures of these contested instructions. Clearly the Organization's conduct has been aberrant to its recently conceived contentions. Carrier submits that the Claimant has been the unfortunate victim of the confusion generated by the Organization's adamant repudiation of the E-7 Instructions, and affirms that its conduct reflects regard for the interests of both the Claimant and judicious medical advice. For the reasons advanced herein, Carrier submits that the Claimant's demand for compensation for the period October 12, 1964 - February 9, 1965 should be denied in its entirety.

This claim has been handled by discussion and correspondence with representatives of the Organization and the information contained herein is mutually known to both parties.

Oral hearing is not desired unless requested by the Organization.

(Exhibits not reproduced.)

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.

Claimant, a carman painter with 18 years service, suffered a cardiac infarction on about March 13, 1964, and as a result was hospitalized and under doctors' care for several months. On October 8, 1964, Claimant informed Foreman VanSciver that he had regained his health and would report for work Monday, October 12, 1964. The Foreman told him to see Carrier's Medical Examiner and to obtain a Return to Duty Form. Claimant presented himself to the Medical Examiner on the following day, October 9, and on the same day, as pointed out in Carrier's submission, Dr. Detrick, Claimant's personal physician, conveyed his approval to Carrier's Medical Examiner of Claimant's return "to full duty." The Medical Examiner refused to issue the necessary Return to Duty Form and Claimant was withheld from service until February 9, 1965.

This Board of course is not qualified to pass upon decisions by physicians that pertain to medical matters. It is equally realistic that Carrier, charged as it is with important operational and economic responsibilities, has the power to investigate the condition of an employe who has suffered a serious illness and, where medically warranted, to reject his application for a return to duty. Its own medical department is certainly entitled to look into the facts and need not rely on the reports of private physicians who may not be entirely conversant with the rigors and requirements of the employe's position. This power, however, must not be exercised in an arbitrary or cavalier manner.

As an employe with 18 years service, Claimant manifestly merited a reasonable degree of cooperation from Carrier in his commendable desire to

return to productive work. If Carrier believed that there was a real question as to his physical ability to perform his duties, it was a simple matter to hold a prompt investigation of the question rather than to cause him to incur further losses in terms of wages and morale.

Carrier's own regulations, Standard Instructions E-7, specifically recognizes the reasonable and proper steps to take "if the Medical Examiner does not pass him as being in proper condition to resume work." They state that the employe "will nevertheless be permitted to continue on duty" and a hearing will be held under the Discipline Rule of the Agreement to investigate the question of whether or not he is in "improper physical condition." While Carrier's Standard Instructions E-7 have not been agreed to by the Organization and do not have the force and effect of a binding agreement, they do express guidelines as to what is considered proper procedure in medical cases on this property and constitute a significant admission against interest in the present case. These Instructions have been in existence since November 1942 and there is no evidence that they have been cancelled since that time. As recently as at the close of the hearing that was finally held on February 25, 1965, Division General Superintendent Follweiler acknowledged in his statement that Instructions E-7 are still in effect and followed.

Under the circumstances of this case, we are satisfied that the claim must be sustained. It must be carefully distinguished from the situation where we are asked to review disputes between an employe's personal physician and a carrier's medical examiner. We do not undertake to pass upon Carrier's Medical Department's findings as to Claimant's physical condition. All we are deciding is that it was arbitrary and discriminatory for Carrier to neglect to hold a reasonably prompt hearing in this matter and to apply its established procedures to Claimant's situation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967