

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY
(FRANK O. LOWDEN, JAMES E. GORMAN, JOSEPH B. FLEMING,
TRUSTEES)**

STATEMENT OF CLAIM.—

"Claim of Ebb Tarry, B. & B. helper, El Paso-Amarillo Division, that he be paid for time lost on account of being irregularly held out of service from August 10th to September 30th, 1935, inclusive."

STATEMENT OF FACTS.—Mr. Ebb Tarry entered the service of the Chicago, Rock Island and Pacific Railway Company on its El Paso-Amarillo Division as a bridge and building mechanic helper May 28th, 1935. He worked in that capacity until August 9, 1935, a period of approximately 75 days, when he was dismissed, and was reinstated in the service September 28, 1935.

There is in evidence an agreement between the parties bearing effective date of November 1st, 1927.

POSITION OF EMPLOYEES.—The employees contend that Mr. Tarry was removed from the service on account of his physical condition, and offer as proof that he was physically sound a statement by C. E. Phillips, M. D., and for that reason he should be paid for the time he could have worked between the date he took the doctor's examination and the date when he was reinstated.

POSITION OF CARRIER.—The management contends that Tarry was removed from the service on account of application not having been approved, was therefore not entitled to pay for period involved.

OPINION OF THE BOARD.—The conflicting contentions in regard to reasons for Mr. Tarry having been removed from the service on August 10th, 1935, and the reasons for his reinstatement on September 28, 1935, leave a doubt in the minds of this Board as to his right to be paid for that period. The questions of the right of the Railroad Company to remove him from the service, and his right to be returned to the service, are not before us. All the Board is required to decide is his right to pay for time lost between August 10th and September 30th, 1935.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That on account of all the circumstances surrounding this case claim should not be allowed.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1937.