

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ERIE RAILROAD COMPANY

C. E. Denney and John A. Hadden, Trustees

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Erie Railroad that, Telegrapher Edward L. Clement was improperly removed from the service of the carrier on April 1, 1931, and that he be restored to active service and paid for all time lost."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing revised date of May 1, 1929, as to rules and rates of pay is in effect between the parties to this dispute.

"Telegrapher Edward L. Clement was employed in the service of the carrier on positions covered by said agreement, having entered the service January 1, 1896.

"Due to ill health, Clement requested and was granted a leave of absence on July 1, 1928.

"While on leave of absence and suffering ill health, Clement voluntarily became a patient at the Middletown State Homeopathic Hospital, Middletown, New York, Department of Mental Hygiene, on September 26, 1928, for treatment of Involution Melancholia (Mental Depression) and remained at the hospital until November 5, 1929, when he was placed on parole at his own request, and on November 5, 1930, was discharged by the staff as recovered without mental symptoms of any kind.

"Upon reporting for service on January 18, 1931, and after conference with appropriate officers of the carrier, resumed work on January 19, 1931, and remained in the continuous service until April 1, 1931, when he was summarily removed from the service on an order issued by the Chief Surgeon of the carrier, without investigation or examination of any character, and has not since been physically or mentally examined by any representative of the carrier.

"The carrier refuses to restore Clement in the service."

POSITION OF EMPLOYES: "The Erie Railroad has for many years, and prior to July 1, 1928, maintained a Chief Surgeon to examine and determine the physical and mental condition of persons in its employ. The carrier clothes the Chief Surgeon with authority to require the removal from the service employees who, in his opinion, are unfitted physically or mentally to remain. Thus the livelihood of the employees rests upon the opinion the Chief Surgeon may form of their physical ability.

"Some time during the latter part of 1930 Clements made attempts to return to service, but it was felt that in view of the fact that he had obtained the 'Special Allowance,' based on his having been totally and permanently unfit for railroad service as a telegrapher, nothing was accomplished. In 1931, as stated above, due to misunderstandings and erroneous handling, he was permitted to return to work, but when it was developed by the Personnel Department from a check of the payrolls, the error was immediately corrected.

"Under the Railroad Retirement Act Clements was transferred from the Erie Railroad 'Special Allowance' to the annuity rolls of the Railroad Retirement Board, and has been continued on that basis at the rate of \$50.00 per month previously established.

"It was not until March 4, 1936 that the Telegraphers' organization presented the demand that is now before your board for consideration; that is claim for reinstatement and pay for all time lost since April 1, 1931.

"We are entirely unfamiliar with the position on which the organization has progressed this case to your board; therefore, it is our request that oral hearings be had and that the Erie Railroad Company be permitted to file such other statements or evidence as they may deem necessary in connection with the ex parte statement by the employees."

OPINION OF BOARD: The claim and the contentions of the parties are hereinabove set forth.

Telegrapher Edward L. Clement entered the employment of the Erie Railroad Company on the first day of January, 1896. In the spring of 1928, he was granted sick leave and on September 26, 1928, voluntarily entered the Middletown State Homeopathic Hospital for treatment. He was suffering from diabetes and was depressed on account of worry over the condition of his health. This was diagnosed involution melancholia. The treatment cured the diabetes and his condition of mental health improved so that he was paroled to his home on November 5, 1929. This parole was made at his own request so that he might, if he wished, return voluntarily. During the year following, the hospital authorities kept in touch with him and on November 5, 1930, he was discharged as completely cured.

Thereafter, on the 19th of January, 1931, he re-entered the service as telegrapher in the yard office in Port Jervis, New York, and gave satisfactory service. However, the company contended that his re-employment was irregular and dismissed him on March 31, following. The claim is for reinstatement with compensation for time lost.

That his service was satisfactory is shown by a letter of L. H. Crine, as follows:

"Port Jervis, April 2, 1931.

Mr. C. L. Bridge,
General Chairman,
Deposit, N. Y.

Dear Sir:

In connection with your inquiry to me with reference to the ability of operator E. L. Clement to perform the duties assigned him in this office.

During the period of time that Mr. Clement has been in service, his work has been performed perfectly satisfactory and I believe, in so far as I know, he is capable of handling the position in an efficient manner.

I have had no cause for complaint whatsoever and can highly recommend his work not only in his interest manifested but also the manner in performing it.

Yours truly,

(Signed) L. H. Crine
General Yardmaster."

On May 29, 1929, Clement's wife wrote the carrier that her husband had been off sick for a year or so and was then confined to the Nervous Ward of the Middletown State Hospital; that his condition was such that he would not be able to return to work and that she would appreciate it if they would take up his case and if consistent, have him placed on Special Allowance Payroll. On January 4, 1930, Clement also requested in writing that his Special Allowance be hurried.

Had Mr. Clement been committed to the hospital by a court order at the time he voluntarily entered and had there been a court order restoring him at the time he was discharged as completely cured November 5, 1930, the presumption of his sanity would continue until overcome. We think the presumption obtains on the facts in this case. Besides, it is sustained by reports of examinations made by physicians specializing in psychiatry and mental diseases in 1933 and 1936, and I find nothing in the record that tends to overcome the presumption and rebut this evidence. Dr. Chace made an examination in May, 1929; but later examinations requested by, and on behalf of, Clement, after he was discharged as completely cured in 1930, were refused.

However, there is later medical evidence that tends to support the presumption of complete recovery. On August 26, 1933, Ray W. Moody wrote as follows:

"Middletown State Hospital
Homeopathic

Middletown, New York
August 26, 1933.

TO WHOM IT MAY CONCERN:

This is to certify that Edward L. Clement of Port Jervis, N. Y., formerly employed as a telegraph operator for the Erie Railroad, entered this hospital as a voluntary patient on September 26, 1928.

At the time of his admission he was depressed and worried over his health, having at the time a slight case of diabetes. After proper treatment of his physical condition he rapidly improved in mental health and was paroled home November 5, 1929. He was paroled instead of being discharged outright at his own request so that if he was in need of future treatment he might return to the hospital of his own volition. His progress was closely followed by our social service department during his year at home. He continued to make excellent progress and at the end of another year was in excellent physical health and entirely recovered from any evidence of mental depression.

The hospital has had occasion to keep in close contact with Mr. Clement since that time and has found no evidence of any mental symptoms.

I personally examined Mr. Clement today and find him to be in excellent health and fully capable of resuming his former position.

Yours very truly,

(Signed) Ray W. Moody, M. D."

About three years later Dr. Moody again wrote:

"STATE OF NEW YORK
DEPARTMENT OF MENTAL HYGIENE
MIDDLETOWN STATE HOMEOPATHIC HOSPITAL

Middletown, N. Y.
August 14, 1936.

Robert Woodman, M. D.
Superintendent.

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Edward L. Clement of Port Jervis was admitted to this hospital on September 26, 1928, coming of his own volition. At that time he suffered from a mental depression. He remained in the hospital until November 5, 1929, following which he went to his home but was kept under hospital supervision for one year. During that year he was seen frequently by members of the staff of this hospital and on the consensus of the opinion of all the staff he was discharged as recovered, without mental symptoms of any kind, on November 5, 1930.

I have seen Mr. Clement on several occasions since, the most recent of which is the date of this letter, viz., August 14, 1936, and in my judgment he is perfectly normal in every respect and fully capable of resuming his duties with the Erie Railroad Company.

(Signed) Ray W. Moody, M. D.,
First Assistant Physician

RWM:F"

In April of the same year, 1936, another expert in mental diseases, Dr. Frederick W. Seward, wrote as follows:

"TO WHOM IT MAY CONCERN:

I, Frederick W. Seward, M.D., hereby certify that I graduated from Medical College in 1898, and, since 1899, have practiced my profession, specializing in Psychiatry. That I have been associated with, and for many years superintendent of, Interpines, Goshen, New York, a private sanitarium, operated for the care and treatment of psychiatric and neuro-psychiatric patients.

That, on March 30, 1936, Mr. Edward L. Clement of Port Jervis, New York called upon me and requested that I examine him as to his mental condition.

That I complied with his request and that, following this examination, I visited the Middletown State Hospital where said Edward L. Clement claimed to have been a patient. I examined the records at said Hospital and talked with the physician who had had charge of the case of Edward L. Clement during his stay at said State Hospital. These records in every way corroborate what Mr. Edward L. Clement had told me. They stated that said Edward L. Clement was admitted to said Hospital September 26, 1928, as a voluntary patient, he having applied in person and requested admission.

That he had been diagnosed as suffering from Involution Melancholia. That he had improved to a sufficient degree to warrant the State Hospital in placing him on parole November 5, 1929, and that on November 5, 1930, he had been discharged from said hospital as recovered.

On April 6, 1936, I again examined Edward L. Clement at my office. It is my opinion as a result of these examinations and his record as above set forth and as considered in more detail, that he is sane; that he is not now suffering from Involution Melancholia,

or any other mental disorder, and, insofar as an opinion may be formed from his record and from what the physicians at the State Hospital said, he has probably been sane since November 5, 1930, the date of his discharge.

It is further my opinion that there is no ground whatsoever to suppose that, should Mr. Edward L. Clement resume his former occupation, he would be lacking in efficiency because of his hospital experience and illness.

SIGNED.....

FREDERICK W. SEWARD, M. D.

SUBSCRIBED AND SWORN TO BEFORE ME THIS

6th day of April, 1936.

Mildred E. Miller, Notary

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In answer to Clement's request for an examination on May 25, 1931, Chief Surgeon is reported to have shaken his finger at Clement and said: "You have been in the State Hospital. Neither you, nor anyone else, who have been in State Hospitals, will work for this company or any other company. If I have to suffer for this, I will suffer." We believe this was arbitrary and unjustified by anything appearing in the record.

It appears that the Claimant, Mr. Clement, drew \$50.00 per month until the Railroad Retirement Act took effect and he was transferred to the National Retirement Board and has received \$50.00 per month, except for the two months period following his re-employment on January 19, 1931. The carrier contends that the first request for compensation was made in March, 1936.

It is the opinion of the board, based upon the record, that Mr. Clement should be reinstated to his position of telegrapher in the yard office at Port Jervis, New York, forty days from the date of this award unless within that time an impartial medical examination, made by a doctor or doctors so selected as to insure skill and fairness, shall determine that his physical and mental condition is such as to disqualify him, and that, barring such disqualification, he should then receive compensation from April 1, 1931, less the amount received from the carrier since that date and less such additional sums of money, if any, as he may have received for work, if any, performed after that date.

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 employe involved in this dispute are respectively carrier and employe 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 the carrier violated the existing agreement and the employe shall be re-instated in accordance with this opinion.

AWARD

Claim sustained as set forth in the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1940.