

Award No. 2417

Docket No. SG-2559

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

**THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: That James W. O'Brien be paid for all time lost at signal helper's rate of pay since February 5, 1943, until he is restored to such position in Foreman Scott's gang with headquarters at Poughkeepsie, New York.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 16, 1942, James W. O'Brien, a signal helper with thirteen years' seniority rights with this carrier on this seniority district, was employed in Foreman Scott's gang with headquarters at Poughkeepsie, New York. While so assigned, he was undergoing treatment for defective hearing. He reported frequently to the carrier's examiner for check up on his condition, which was found satisfactory and was continued in service on his regular position.

Following thorough physical examination by United States medical officers, Mr. O'Brien was inducted into military service October 16, 1942 and, in accordance with Memorandum of Agreement between the Trustees of the property of the New York, New Haven & Hartford Railroad Company and the Brotherhood of Railroad Signalmen of America, which agreement is made a part of the record in this claim and shown as Brotherhood's Exhibit No. 1, he was granted a leave of absence in order that his seniority and re-employment rights would be preserved while serving his country in the armed forces.

On February 2, 1943, Mr. O'Brien notified the carrier (his employer) that he had been honorably discharged from military service and wished to report for duty February 5, 1943 on his former position in Foreman Scott's gang at Poughkeepsie, New York. Under date of February 4, 1943, Mr. O'Brien was advised by Mr. F. H. Palmer that it would be necessary for him to take a physical examination by company doctor and that it would also be necessary for O'Brien to take eye and ear test by Company Examiner. Mr. Palmer explained that he understood the company required these examinations account belief that many things could happen while employees were in United States military service. This advice from Mr. Palmer was received February 5, 1943. Passes were ordered at once and received February 19. February 20 Mr. O'Brien submitted to a physical examination, paid for same, and was given the following in writing by company doctor:

"To whom it may concern:

This man is physically fit for work.

J. H. Dingman."

The matter has been handled with the carrier by the Chairman of the Replacement Committee of the Selective Service System and assurance given by the carrier that had O'Brien's hearing been as good following his discharge from military service as it was when he went into military service, he would have been permitted to go back to work notwithstanding that his hearing before he went into military service was considerably below par. Mr. O'Brien has also endeavored, through political avenues, to have his case adjusted, it being suggested that it should be submitted as a test case. It has, apparently, been submitted with that purpose in view.

OPINION OF BOARD: The claimant, James W. O'Brien, following his honorable discharge from military service on account of defective hearing, reported for resumption of duty with the Carrier on his former position in gang with headquarters at Poughkeepsie, N. Y. Re-examination showed that his hearing had deteriorated to such point below the Carrier's standard as not to justify resumption of his former position.

The record shows that his request, and the declination thereof, had been handled by the parties and they had reached agreement that the claimant take temporary employment in the Signal Shop at New Haven, Conn., until such time as he could improve his hearing by the means he had followed prior to going into military service,—an agreement which the Division feels represented a fair and proper disposition of the case.

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 employes 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 agreement noted in the Opinion of Board represented a fair and proper disposition of the case.

AWARD

Claim disposed of in accordance with Opinion and Findings; compensation for time lost since February 5, 1943, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1943.