

Award No. 3619

Docket No. PM-3297

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: . . . for and in behalf of Porter O. Carpenter, who is now and for some years past has been, employed by The Pullman Company as a porter operating out of the Pennsylvania Terminal District of New York City, New York.

Because The Pullman Company did, under date of November 16, 1944, deny the claim filed by the Organization for and in behalf of Porter Carpenter under date of October 3, 1944; said claim contending that Porter Carpenter should be paid from the date of May 4, 1944, until such time as he was returned to service at his established rate of pay.

And further, for Porter Carpenter to be compensated for the time that he lost as a result of not having been returned to the service in accordance with the contentions of the Organization as set forth in the above mentioned claim.

OPINION: This docket shows that Claimant has a record of physical disability dating back to 1942, and that the Railroad Retirement Board granted him a full annuity on the basis of total disability, effective August 17, 1942. Subsequently he received hospital treatment and underwent an operation on his right wrist, due to an arthritic condition, following which on April 11, 1944, he was advised by Dr. Bosworth that he could resume work. He reported for work on May 4, 1944. The Company's Chief Medical Examiner recommended further examinations and he was subsequently re-examined by Dr. Moses, who expressed the opinion he was able to resume work but that opinion was based upon the condition of Claimant's wrist, which had healed. A complete physical examination, including x-rays, disclosed that Carpenter was suffering from pulmonary tuberculosis. Petitioner admits in its supplementary submission that the record is quite clear on that point.

Following disclosure of this condition the record is replete with different opinions by medical experts as to Carpenter's condition. Regardless of the fact that for some eight months medical authorities were in disagreement, both parties acknowledged that the issue which this Board is asked to resolve is on what date between May 4, 1944, and February 13, 1945, when Carpenter was returned to service, was he fit and able to return to work with safety to himself and the public.

In view of the different medical opinions with respect to Claimant's condition, the issue presented is one which cannot be determined by this Board. Therefore, this dispute should be remanded to the parties.

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 Employees involved in this dispute are respectively carrier and employees 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

For the reasons stated in the Opinion this dispute will be remanded to the parties.

AWARD

Case is remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1947.