

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY (Joseph B. Fleming and Aaron Colnon, Trustees)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mrs. Hazel A. McLeod, Seamstress at the Rock Island Laundry be paid for time held out of service from August 9, 1945 to April 15, 1946, as follows;

August 9, 1945 to December 31, 1945, incl.—121 working days at \$4.60 per day (rate of Seamstress) or \$556.60;

January 1, 1946 to April 15, 1946, incl.—89 days at \$5.88 per day, or \$523.32, making a total of \$1,079.92.

EMPLOYES' STATEMENT OF FACTS: An Agreement, bearing effective date of August 2, 1945, as to rules and working conditions, is in effect between the parties of this dispute.

We quote for the Board's information, exchange of correspondence in this case:

"437—10½ St.

Silvis, Ill.

August 30, 1945

"Mr. T. D. Wickham
Superintendent Dining Cars
The Chicago, Rock Island & Pacific Railway Co.
51st Street & Wentworth Avenue
Chicago, Illinois

"Dear Sir:

"This letter will have reference to the removal of Mrs. Hazel McLeod, being held out of service due to opinion of Dr. Joseph DeSilva, of Rock Island, Illinois, who claims that Mrs. McLeod is suffering or had been suffering from epileptic fits, as Dr. DeSilva refers to them.

"We have now the written testimony of Dr. M. S. Dondanville, Company surgeon, and also the opinion of Dr. Wm. F. Schroeder, Mrs. McLeod's own physician to the effect that she is not suffering from any symptoms or disability as claimed by Dr. DeSilva.

6. Had she not been removed from the pile of linen, she might have suffocated.
7. When she was placed on a chair, she was still in a stupor and froth was wiped from her mouth.
8. She did not orient herself to her surroundings.
9. As the seizure began to subside, she could only answer questions slowly, with difficulty and incoherently.

It is significant to note that Florence Briggs indicates in her statement:

"I remembered that Dr. Schroeder had attended her a few years ago when she had a similar spell, so I called him."

In the report of the Committee of Disability and Rehabilitation of the Medical and Surgical Section of the Association of American Railroads dated May 12, 1947, there appears this comment:

"As stated in our last Report (Transactions 1946, Pg. 19), the epileptic equivalents present a far more difficult problem than actual epileptic seizures since attacks may not be accompanied by convulsions, and the entire manifestations may consist merely of a momentary loss or lapse of consciousness. During such a brief state, serious accidents could occur with employees engaged in engine or train service, and gives the subject a momentous importance from the Railroad's standpoint.

"It is recommended that all cases of disruption of the mental faculties, even though momentary, should be carefully investigated before permitting the employee to return to duty in any hazardous occupation. Any recurrence should be considered sufficient to warrant the affection as being classed of a disqualifying nature and such employees should be prohibited from engaging in * * * hazardous occupations."

We urge that it is not only the right of the carrier, but the obligation and responsibility of the carrier to know that its employees are in a safe condition to perform their duties in a safe manner not only with respect to their own well-being, but also that of their fellow employees. We must insist upon an unqualified right of our Medical Department to determine whether or not employees are safe for the type of service in which they are to be used.

We are not in agreement with the time lost as shown in the employees' statement of claim. According to our records the Claimant was absent as the result of being superannuated a total of one hundred eleven (111) days in 1945 and eighty-seven (87) in 1946.

We respectfully petition the Board to deny the claim.

OPINION OF BOARD: Claimant Hazel A. McLeod, a seamstress at the Rock Island Laundry, was held out of service from August 9, 1945 to April 15, 1946. She claims this action was violative of the Agreement and asked for compensation for the period.

The evidence shows that on August 8, 1945, the Claimant, while working at a power driven sewing machine, fell in an unconscious condition. The Organization contends that she fainted as a result of having her teeth extracted on the Sunday previous. The Carrier contends that she had an epileptic seizure. The Carrier realizing the danger of permitting an employee subject to epileptic seizures to work around a moving machine, held Claimant out of service.

The evidence shows that Claimant became very rigid when she fell. There is evidence that she frothed at the mouth. As she revived, she was in a stupor and answered questions slowly and incoherently. There is evidence also by a fellow employee that she had had a similar attack about

a year before. We are convinced that Claimant's attack was something more than a fainting spell and that the Carrier was warranted in taking her out of service until her actual condition could be determined.

The record shows that it is almost impossible to diagnose epilepsy except during a seizure or by a case history showing previous seizures. It is not disputed that the Company physician and Claimant's physician attended Claimant only after she had revived. They were dependent upon the statements of fellow employes as to the nature of the attack. This was sufficient to support a tentative diagnosis and warrant the removal of Claimant from the service as a precautionary measure until her actual condition could be ascertained.

The Carrier and its physicians, however, permitted the matter to drift and took no action to ascertain her actual physical condition even though she was protesting the action taken. Employes who are dependent upon manual labor to earn a living are entitled to more consideration than this Claimant received. When pressed by the Organization, the Carrier's physicians authorized her return to work. She returned to her position on April 16, 1946, where she has since remained. There simply is no reason why Claimant's condition could not have been ascertained within a reasonable time after August 8, 1945. The obligation of the Carrier to take precautionary measures to guard the safety of employes subject to epilepsy, fainting spells and similar ills, does not warrant a complete disregard of the rights of the employes. It is quite evident, in view of the subsequent history of the case at least, that a complete examination conducted over a reasonable period of time, would have revealed no different condition than was found in April 1946 immediately before Claimant was put back to work. We think 60 days would have been ample time for the Carrier to have made this determination, considering the type of case here involved. The claim will be sustained from October 9, 1945 to April 15, 1946.

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 employes 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

The Agreement was violated.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.