

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 PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Edward B. Bertges, Trucker, Parade Street Freight Station, Erie, Pennsylvania, be compensated for monetary loss from January 22, 1947, to March 4, 1947, inclusive, during which period he was improperly held out of service. (Docket C-345)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

This dispute was progressed to the highest operating officers of the Carrier by means of a Joint Submission. This Joint Submission is attached as Employees' Exhibit "A" and will be considered as a part of this Statement of Facts.

The Claimant, E. B. Bertges, regularly assigned Trucker at Parade Street Freight Station, Erie, Pennsylvania, since August 10, 1923, was required by the Freight Agent, Mr. O. L. Frederick, on January 21, 1947, during the A.M., to report to the Carrier's Medical Examiner at Erie, Pennsylvania.

The Claimant reported to the Medical Examiner's office as instructed, and was subjected to a partial medical examination by an Assistant Medical Examiner of the Carrier's Medical Examiner's Office.

Following this partial medical examination on January 21, 1947, the Claimant, Trucker Bertges, returned to his work as a trucker and completed his tour of duty on this date at the end of which he was instructed by the Freight Agent to discontinue reporting for duty and consult his personal physician.

On January 25, 1947, Claimant Bertges went to his personal physician, H. W. Riester, M.D., 226 West Eighth Street, Erie, Pennsylvania, for a physical examination and received the following report:

The Carrier submits that its action in the instant case was taken only after advice from competent medical authority and the facts present justified its action in holding the Claimant out of service.

In closing, the Carrier desires to state that there is no practice on this railroad of allowing truckers compensation when off duty on account of sickness.

It is, therefore, respectfully submitted that the Claimant was properly held out of service in the period involved on the recommendation of proper medical authority, and that an employee so held out of service is not entitled to any compensation under the provisions of the applicable Agreement.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

Exhibits not reproduced.

OPINION OF BOARD: Claimant was a regularly assigned trucker at Parade Street Freight Station, Erie, Pennsylvania, since August 10, 1923. On January 21, 1947, in the forenoon, he was required to report to Carrier's Medical Examiner's office. After being examined, he returned to his work and completed his tour of duty for that day. At the close of his work on that day, he was advised by his superior to discontinue reporting for duty and to consult his personal physician. On January 25, 1947, Claimant went to his personal physician and was advised in writing that he was in good health. On January 28, 1947, he again reported to the Carrier's Assistant Medical Examiner and was informed that "there was no apparent change in his condition." He returned at weekly intervals to the Assistant Medical Examiner to obtain permission to return to work without success. On February 20, 1947, he was examined by Dr. R. C. Kell, a neuro-psychiatrist, Philadelphia, Pennsylvania, who pronounced him fit for work. He was returned to work on March 4, 1947. Claimant contends that he was unjustly suspended from service and claims monetary loss for the time he was held out of service.

The evidence shows that Claimant was afflicted with a congenital deformity that affected his gait. There is evidence in the record that Claimant fell while in the performance of his work and his superior officer, believing that there was no apparent reason for the fall, directed that he report to the

Carrier's Medical Examiner for an examination. The findings of the Examiner do not appear in the record although his conclusion is there found under date of January 21, 1947, to the effect "it is not safe for him to continue his duties as a trucker at the present time on account of a weakness in both legs which might be caused by a nervous disorder." Nowhere does the record show that Claimant was suffering from any disability other than that which he had always had. He was permitted to return to work the day that he was first examined. His personal physician, with whom he had been directed by the Carrier to consult, pronounced him fit for work four days later. On February 20, 1947, Dr. Kell found him able to work, it being the first time he had examined him. The record does not establish that Claimant had suffered any new disability or suffered any increase of the old. The Carrier has failed to establish the physical disability of Claimant as a justification for holding him out of service until March 4, 1947.

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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.