

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines,

(1) That Telegrapher John W. Freeman be permitted to resume his duties as telegrapher at Walnut, Kansas, the position he was assigned to and worked prior to removal from the service on March 6, 1948.

(2) That he shall be paid for all time held out of service under the Guarantee Rule, Rule 9, Section (r).

(3) That he shall also be reimbursed for the amount of money he paid out in carrying out the instructions of the Superintendent in being examined by two psychiatrists.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of September 1, 1947, as to Rules, working conditions, and rates of pay is in effect between the parties to this dispute. The wage scale of the Telegraphers' Agreement on page 46 listing the position and the rate of pay of \$1.18 per hour at Walnut is on file with the Third Division of the National Railroad Adjustment Board.

The following bulletin was issued under date of January 24, 1948:

"Missouri-Kansas-Texas Railroad Company
Office of Superintendent,
Eastern District,
Franklin, Missouri,
February 4, 1948
747

"CIRCULAR NO. 68

All Agents
All Telegraphers and Levermen:

Permanent vacancy exists for telegrapher-levermen, Walnut, Kansas, position #1658, Rate \$1.18 per hour, assignment 4:00 P. M. to 12:00 midnight, six days per week, relief day, Wednesday.

Manifestly the only acceptable evidence in a case of this character is the expert opinion of competent and experienced medical physicians, and the evidence so far produced of this character is that Mr. Freeman is mentally upset. The carrier, therefore, excepts to the introduction of any hearsay remarks of laymen interspersed with the hearsay testimony and argumentative orations of the General Chairman, as this is not and cannot constitute proper evidence as to Mr. Freeman's physical and mental well-being.

The carrier should not be penalized for the unfortunate behavior and physical and mental condition with which Mr. Freeman is afflicted, as the carrier has in no way been able to control same and is in no respect responsible therefor.

In summarizing, the only reasonable and logical findings which can be deducted and had from the evidence, are that the alarming, suspicious, and wrongful conduct of John W. Freeman gave rise to this case and justified the carrier in requesting Mr. Freeman to report to a qualified physician for determination of his mental status; that requesting John W. Freeman to report for said examination was a proper exercise of the duty the carrier owed the public and Mr. Freeman's fellow employes to safeguard and protect their well-being; that John W. Freeman failed and refused to submit to said examination and to produce credible evidence of his qualifications to safely perform the duties of telegrapher-leverman; that said refusal of examination by Mr. Freeman constituted an abandonment and waiver of any and all rights Mr. Freeman had possessed under his contract of employment with the carrier; that Mr. Freeman has not made a sufficient compliance with the Railway Labor Act and rules of the Board to bring into active play the potential jurisdiction of the Board; that Mr. Freeman is not physically qualified to perform the duties of telegrapher-leverman at Walnut, Kansas, and is unable to perform his contract of employment; that his inability to perform his contract of employment and his waiver and abandonment of his contract by refusal of examination, terminated and ended Mr. Freeman's contract of employment; that accordingly no dispute between an employe and a carrier within the meaning of Railway Labor Act exists; and that Mr. Freeman has sustained no damages under the former contract, his loss of time being due to his own inaction and wrongful conduct.

The carrier respectfully requests that the award of the Board be "claim denied".

The carrier requests ample time and opportunity to reply to any and all allegations contained in the employes' submission.

Except as expressly admitted herein, the carrier denies each and every, all and singular, the allegations of petitioner's claim, original submission and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned Telegrapher-Leverman at Walnut, Kansas. Reports came to Carrier of conduct on his part, which would indicate that he might be laboring under hallucinations that would endanger the safety of fellow employes or the public. Accordingly without investigation he was sent to Dr. Schwenkenberg, psychiatrist of the Employes' Hospital Association at Dallas, Texas, on March 8, 1948. The following day the psychiatrist reported to the chief surgeon that he found claimant quite upset by reason of the fact that he thought his behavior had been misrepresented and had a notion that certain people were trying to get rid of him. This situation, the doctor said, suggested that claimant was beginning to have delusions of persecution indicating that he was developing either a paranoid form of Schizophrenia or a paranoid state. His recommendation was that claimant "be allowed to continue with his work and that he be observed closely for the next few weeks, after which time I will be given an accurate description of his behavior. ***If symptoms, however, persist or return, I would then advise hospitalization***."

However, instead of allowing him to continue his work or obtaining any accurate report of his behavior, as recommended, Carrier then sent claimant

to another psychiatrist named Mueller at St. Louis, Missouri, to whom he submitted himself on March 22 as directed. Dr. Mueller made a report of his examination which was negative in every respect but he stated that prior to a final conclusion either an "adequate objective history from other individuals" must be obtained or a period of psychiatric hospitalization had for study of his behavior.

It will be noted that neither of these specialists recommended immediate hospitalization or that claimant should be suspended from his position, yet his suspension was continued without any attempt to furnish an "accurate description of his behavior" or an "adequate objective history from other individuals." On March 17, claimant wrote Carrier requesting an investigation of his reported conduct and it was refused. On March 24, Dr. Schwenkenberg wrote in part as follows: "If those who associate with Mr. Freeman feel reasonably sure that there is something wrong with him, I would suggest that you obtain authorization from Dr. Kieffer (the Chief Surgeon) suggesting that he be placed here in Beverly Hills Sanitarium for further observation and treatment. I would also like a detailed description of his behavior from those who associate with him and feel in their own minds that there is something wrong with him." (Emphasis supplied). On March 26, the Employees' representative made request for formal hearing and this was denied. On April 8, upon recommendation but without order of the Carrier, claimant against presented himself to Dr. Schwenkenberg with apparent intention of being hospitalized but neither he nor his wife was satisfied with arrangements possible for their stay and they left after an interview. On April 29 representatives of both Carrier and Employees by arrangement met at Walnut to investigate the reports upon which claimant's suspension was based and found them without substantial support. Finally on June 12, Carrier offered to return claimant to service "with the specific understanding that he will submit to psychiatric examination at any time after 30 days from the date of his return to service" with payment for time lost and expenses. On June 14 this offer was rejected in behalf of claimant. Apparently Carrier acted solely on the reports of these psychiatrists yet without complying with their requests for factual background or of further observed employment.

Under its obligation to protect the safety of employees and public, Carrier was justified by the reports received in requiring examination of claimant but on the basis of these examinations and its belated investigation of the truth of the reports, it was not justified in holding him out of service. Carrier had no right to make his return to service conditional upon agreement for further examination, except in the event his behavior gave reason to raise question as to his mental health. And claimant had no right to refuse to return to work with understanding that he would submit to further examination in the event his behavior should give such reason therefor. Carrier's offer, conditional on agreement for further examination, "at any time after thirty days" rather than "at the end of thirty days" was probably intended to mean at any time that claimant's conduct might seem to indicate it. This, of course, would be Carrier's right in any event. In view of the indefinite condition we think both parties were there partly at fault in their failure to reach agreement.

We think claimant should be paid for time held out of service to and including June 14, 1948, the date of his rejection of the offer for his return, less net earnings in other employment during this period, together with reimbursement of expenses incurred in reporting for examination including the second trip with his wife to Dr. Schwenkenberg as it was requested that she come with him, and that if he now within 30 days submit to reexamination by competent medical authority selected by agreement between the parties and is found qualified, he be reinstated in his position with seniority unimpaired.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

That Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.