

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:

James Perry, Station Baggage-man, Pennsylvania Station, Baltimore, Maryland, Maryland Division, be compensated for monetary loss from March 1, 1948, to May 9, 1948, inclusive, during which period he was improperly held out of service. (Docket E-566)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position, and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees, between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act and which has also been filed with the National Railroad Adjustment Board.

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, James Perry, was a regularly assigned Station Baggage-man, Pennsylvania Station, Baltimore, Maryland, with approximately 31 years of service.

The record indicates that Claimant Perry was held off duty by one of the Carrier's Medical Examiners as of the close of business February 15, 1948.

From February 16, 1948, to February 28, 1948, he was allowed two weeks' vacation and compensated therefor.

On March 1, 1948, after completing his vacation of two weeks, he was denied the right to return to his regular position, being held off duty by R. H. Leathem, Agent, Pennsylvania Station, Baltimore, Maryland, due to an alleged physical impairment.

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 the Claimant's physical condition was such as to justify his being held out of service for the period involved; 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 has respectfully submitted that your Honorable Board should dismiss the claim of the Employee in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned Station Baggageman, Pennsylvania Station, Baltimore, Maryland, when on March 1, 1948, he was held out of service because of physical disability. The claimant contends that he was improperly held out of service and claims compensation for the time he lost.

The record shows that on and prior to March 1, 1948, claimant was suffering from high blood pressure, irregular heart action and possible heart damage. Without laboring the issue, we think the evidence sustains the action of the Carrier in taking claimant out of service on March 1, 1948.

The evidence shows further that claimant was examined by two physicians of his own choice on March 8 and March 10, 1948. Each stated that claimant's blood pressure was normal at that time for a man of his age. On May 7, 1948, claimant was sent by the Carrier to a Dr. Kell for another examination and he was found at that time to be physically fit to return to work subject to periodic examinations thereafter. The Organization contends that this evidence establishes that Carrier's Medical Examiner erred in disqualifying claimant from service on March 1, 1948. We do not concur with this contention of the Organization. While Carrier was justified under the evidence in disqualifying claimant from service on March 1, 1948, it does not necessarily mean that claimant would be disqualified for an indefinite period. In the absence of any evidence of sufficient recovery to permit claimant to return to work, we think Carrier would have been justified in continuing his disqualification. But when claimant's two personal physicians found that the disability had been substantially overcome, a conclusion in which the Carrier's examiner, Dr. Kell, concurred on May 7, 1948, the Carrier was no longer justified in assuming that claimant's condition remained the same as when he was disqualified. With these findings before it, the Carrier should have re-examined the claimant within a reasonable time after receipt of the reports of claimant's physicians. We think that five days would have been a reasonable period under the circumstances here shown in which to examine claimant and return him to work. The information was conveyed to the Carrier on April 9, 1948. We find that the Carrier violated the agreement in not returning claimant to work within five days thereafter. The claim is sustained and claimant ordered compensated from April 14, 1948 to May 9, 1948, the day he was restored to service.

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.

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 2nd day of November, 1951.