

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

---

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD  
COMPANY

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Union Local 370 on the property of the New York, New Haven and Hartford Railroad Company for and on behalf of Miss Ivy B. Wilson, attendant that:

(1) She be compensated at her pro rata rate of pay for all time lost since February 1, 1952;

(2) That she be returned to her original assignment with seniority unimpaired, vacation rights restored and that she be allowed to exercise her seniority in accordance with the current agreement between the parties.

**EMPLOYEES' STATEMENT OF FACTS:** The claimant, on February 1, 1952 reported to the New York, New Haven and Hartford Railroad Company as an employe returning to work after illness. Such illness was the result of personal injuries suffered while in carrier's employ some fourteen (14) months prior to February 1, 1952.

That as a result of a medical examination of the claimant by the carrier's physician, the carrier refused to permit the claimant to resume her duties. That the carrier's physician, Dr. E. V. Buzzano in his report on the examination of the claimant dated January 29, 1952, recommended

"In view of systolic murmur of the heart, patient should not be on a type of work that requires constant rushing about and fast service."

That a copy of said medical report is attached hereto and made a part hereof, marked Exhibit Five (5).

That subsequent to a hearing on the property, claimant was examined by physicians on two separate and distinct occasions and by two separate and distinct physicians.

That the resulting reports rendered by these two physicians were submitted to the carrier and are attached hereto, made a part hereof and are designated as Exhibits Six (6) and Seven (7).

That the examination indicated by Exhibit Four (4) was given before the examination by Exhibit Five (5) which is the examination by the carrier's physician.

Award 5815:

"The record contains evidence of conflicting medical advice, the Carrier's physician reporting Claimant as being unfit for duty, while Claimant's physician reports him physically able to perform, in the main, the duties of his formal position.

"This Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the physical fitness of an employe to work."

In the two preceding cases and in Award 4649 all claims for damages were dismissed. Absent proof of arbitrary or capricious action, or violation of the procedural rules of the agreement, in each Carrier's action in holding employes out of service because of their physical condition was sustained.

By these standards Carrier submits the present claim should be denied in every particular.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record shows that Claimant was restored to service on August 24, 1953. Accordingly, part (2) of the claim herein is moot and should be dismissed.

In view of the facts and circumstances in this particular case, part (1) of the claim should be sustained on the basis provided for in the last paragraph of Rule 17 of the Agreement effective September 1, 1949, but limited to the period from May 11, 1953 to August 24, 1953, the date when Claimant 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 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

That part (1) of Claim will be sustained to extent indicated in Opinion and part (2) of Claim will be dismissed in conformity therewith.

#### AWARD

Claim disposed of in conformity with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.