

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

UNION PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it withheld Sectionman Clarence Brisco from service with the Carrier from May 7, 1951 to April 30, 1952;

(2) Claimant Brisco be reimbursed for the assigned working hours actually lost while out of service of the company at not less than the rate of the position from which he was withheld.

EMPLOYEES' STATEMENT OF FACTS: On May 4, 1951, Sectionman Clarence Brisco, who was employed on Section 100, Albina Yards, Portland, Oregon, under the supervision of Section Foreman W. G. Lowe, was furloughed in force reduction.

On May 6, 1951, the personnel of Section 100 was increased, and Mr. Brisco was recalled to service.

Claimant reported on May 7, 1951, but Foreman Lowe denied him employment pending a physical examination by the Carrier's Medical Staff.

Rule 57 of the Carrier's Physical Examination Rules, Revised July 1, 1949, reads in part as follows:

"When physical examination, re-examination or recheck is necessary, applicant or employe may be sent to any designated examining physician.

Form 2195 must be given to applicant or employe to present to examining physician, and must be filled out completely by company supervisor."

The Carrier's Division Representatives refused both Foreman Lowe and Claimant Brisco's requests for issuance of the above referred to order.

Under dates of February 20, 1952 and April 3, 1952, the Brotherhood's Assistant Chairman, Mr. J. D. Beard, addressed Carrier's Division Engineer, Mr. E. F. Kidder as follows:

POSITION OF CARRIER: The incident on which this claim is premised occurred in the early part of May, 1951. The record discloses that the instant claim was not presented until February 20, 1952—more than nine months later. The agreement—which is controlling—provides that such a claim as this “must be presented within six months.” Since the claim was not presented within six months, the claim must be denied or dismissed as not being handled on the property in accordance with the agreement.

All information and data contained in this Response to Notice of Ex Parte Submission is a matter of record or is known by the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: In view of the facts and circumstances in this particular case, and without construing the rules of the Agreement relied upon by the parties as they might apply to any other case involving the same or similar set of circumstances, the claim is sustained for the period August 21, 1951 to April 16, 1952.

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 claimant is entitled to payment as per Opinion.

AWARD

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.