

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) Charge against Mail Handler Henderson Mayfield that he was "absent without proper authority since May 13, 1958" was not proven at the investigation afforded, and;

(b) Henderson Mayfield was improperly dismissed from the service effective June 5, 1958, and;

(c) That Henderson Mayfield be reinstated in the service of the Carrier, his record cleared of the charge and that he be paid for all time lost as provided in Rule 24¹ of the agreement between the parties retroactive to June 7, 1958.

OPINION OF BOARD: Claimant was employed as mail handler in the Mail and Baggage Department. On April 19, 1958 he reported sick because of a former injury. On May 2 Mail and Baggage Agent Wolfe sent him notice requiring that the report back to work as soon as possible but not later than May 10, "unless you furnish substantial evidence which would necessitate your being off."

On May 10 claimant reported to General Foreman Harbstreet and handed him a letter from his physician saying that claimant had been under his care from April 19 and that "I feel that he should be referred to a specialist for consultation and treatment." General Foreman Harbstreet sent claimant to Mr. Wolfe, who took him to Company physician, Dr. Owens.

¹ RULE 24—EXONERATION. If the final decision decrees that charges against the employe were not sustained, the record shall be cleared of the charges; if suspended or dismissed, the employe shall be reinstated and paid for all time lost, less amount earned elsewhere during suspension or dismissal.

After examination Dr. Owens made appointment with and had claimant examined by Dr. Drisco, a specialist. Both doctors told him that they could find nothing wrong with him and he was sent back to Mr. Wolfe with a written permit to go back to work. Upon receipt of the permit Mr. Wolfe instructed him to take the note and report to Mr. Harbstreet by five o'clock of that day, May 13. Upon so reporting he told Mr. Harbstreet that he was not able to go back to work, did not feel like working, and was told by him: "When you get able to, report two hours ahead of time."

Thereafter claimant was sent notice to report for formal investigation "for your allegedly being absent without proper authority since May 13, 1958." Following the investigation he was found to have been absent without proper authority and was dismissed from the service of the Company.

The right of Carrier to require employes to report for service if physically able is not disputed. After ample notice and opportunity claimant failed to submit substantial evidence to necessitate his being off duty. His physician's report in response to such notice failed to state either that he was unable to work or that it would be harmful. He furnished only his own statement that he was unable to work, that he did not feel like it. As against such evidence the reports of the two doctors to whom he was sent for examination supplied substantial evidence to support finding that claimant was able to report back to work.

It is urged that the statement made by General Foreman Harbstreet on his return to him was authority for further leave of absence, but in view of the notice and permit from the doctors and instruction from Mr. Harbstreet's superior officer, we think no such authority could be implied.

Objection was made also to the decision being made by Mr. Wolfe, he being a subordinate officer to Mr. Parks, who conducted the examination. That ground of objection was not valid and no other objection was made in progressing the dispute on the property. Information not submitted at the hearing or obtained after claimant refused to return to duty may not properly be considered in determining the issue presented at the hearing.

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

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1959.