

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlantic Coast Line Railroad Company that:

(a) The Carrier is arbitrarily and improperly holding out of service Signal Maintainer L. H. Hauss, of the Jesup, Ga. signal maintenance section.

(b) Signal Maintainer L. H. Hauss be reimbursed for all time lost while being improperly held out of service.

(c) Signal Maintainer L. H. Hauss be reimbursed for June 11, 12 and 13, 1958, for service on these days at the direction of the Carrier through Supervisor C. Bacon and Dr. Bunting, Chief Surgeon.

(d) Signal Maintainer L. H. Hauss be allowed actual necessary expenses while away from his home station at the direction of the Carrier on June 11, 12, and 13, 1958, in accordance with Rules 17 and 18 of the current Signalmen's Agreement.

(e) Signal Maintainer L. H. Hauss be immediately reinstated to his signal maintenance position with the Carrier, with seniority, vacation and all other rights unimpaired.

EMPLOYES' STATEMENT OF FACTS: Mr. L. H. Hauss was regularly assigned as Signal Maintainer at Jesup, Ga. On or about June 10, 1958, without any previous advice or warning, Mr. Hauss was instructed by Chief Surgeon Bunting to report to Waycross, Ga. for a physical examination. Mr. Hauss complied with the instructions and was examined by Chief Surgeon Bunting at the Carrier's Waycross Hospital on June 11, 12 and 13, 1958. Following the examination, Mr. Hauss was informed by Chief Surgeon Bunting that he had a very bad back and that he was not physically able to perform his duties as Signal Maintainer. Mr. Hauss did

to relieve an employe whose physical condition creates a hazard to himself and to others.

Although fully justified in relying on the advice of its Chief Medical Officer, Carrier was willing to go even further in an effort to be completely fair. Carrier offered to submit the medical question to a three-man panel of physicians, both parties to be bound by the findings of the panel. Even this offer was rejected.

The respondent Carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant 71 year old signal maintainer had been in continuous service some 39 years. He had suffered a coronary attack in 1948 which kept him off duty about 6 months and another coronary attack in 1953 which kept him off duty for 7 months.

Following physical examination by the staff at Carrier's hospital at Waycross, Georgia, on June 11, 12 and 13, 1958, claimant was held out of service on account of his physical condition. The report showed among other conditions, a somewhat enlarged heart, right inguinal hernia, marked osteoarthritis of the spine and marked disk degeneration, sclerosis, and disease.

Claim was filed by claimant for all time lost following this examination as being wrongfully held out of service, and thereafter he was examined by a physician of his choice who submitted a report based on X-ray findings by a radiologist substantially the same as those of the hospital examination, but concluding that claimant could do the type of work which he had been doing in recent years with no difficulty whatever in spite of the X-ray findings of the spine.

Carrier thereafter offered to accept the finding of the majority of a board of three neutral physicians provided that in case he should be returned to service it should be without pay for time lost. The Organization declined to accept either that provision or the board of three doctors and sought to leave the issue to decision of a single neutral doctor. This was declined and the claim progressed here.

Since claimant's condition was degenerative and progressive Carrier was wrong in its proposed provision against pay for time lost if claimant should be returned to service and the Organization was wrong in declining the proposal of a three doctor panel. Carrier's officials have the duty and prerogative to determine the physical fitness of employes to serve in safety to themselves and the company, provided such decision is not arbitrary, capricious or unfair. Believing the decision to be unfair claimant could file claim as here done. Whether the decision was arbitrary or unfair should be decided by a board of physicians as proposed by Carrier, but in case

claimant should be restored to service by decision of said board it must be with pay for time lost from being held out of service, beginning June 16, 1958.

Accordingly, the case should be remanded to the property with directions promptly to select a board of impartial physicians as was proposed by Carrier and abide by the decision of the majority thereof, or return the case here for final award.

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 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 this dispute be remanded to the property in accordance with the opinion.

AWARD

That claim be remanded in accordance with the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.