

Award No. 9780
Docket No. DC-8880

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION
NEW YORK CENTRAL SYSTEM

STATEMENT OF CLAIM: It is the claim of the General Committee of the American Railway Supervisors Association on the New York Central System:

1. That Dining Car Steward Vincent F. Kucewicz shall be compensated the hours earned and required by any regularly assigned steward during the period of time from May 11, 1954 to January 31, 1955 inclusive, account suspended from work without cause.

EMPLOYES STATEMENT OF FACTS: On May 18, 1954 A. G. Sencak, Superintendent, Dining Service, New York Central System wrote Claimant Vincent F. Kucewicz as follows:

"Dear Sir:

"This will confirm my verbal advice to you May 14th respecting your employment status in this Department.

We are in receipt of information from our Medical Department that findings on examination May 7th, 1954 indicate you are not qualified to continue in service as dining car steward. Consequently, it was necessary that we relieve you from service in that classification.

It is our suggestion that you consult your own physician.

Yours very truly,

/s/ A. G. Sencak"

When respondent's representative wrote this communication he did not outline the exact findings of examination held on May 7, 1954, by their medical department which would disqualify the claimant from Respondent's service as dining car steward. As suggested by Respondent, claimant called on Physician Basil Kinal, 293 Saw Mill River Road, Yonkers 2, New York for examination in a sincere effort of trying to determine the reason for Respondent's disqualification. In doing so he was told by the examining physician that he was in perfect health with the exception of backaches in the thoracic region, as per Association Exhibit No. 1. On June 18, 1954 Attorneys O'Neill and Danzinger wrote Mr. Frank J. Funk, Assistant Chief Claim Agent of the New York Cen-

Facts presented herein were made known to claimant or his representatives in the handling of the claim on the property.

(Exhibits not reproduced)

OPINION OF BOARD: As a result of a medical examination on May 7, 1954 Claimant was relieved of his duties as Dining Car Steward and was notified orally on May 14, 1954 and by letter of May 18, 1954. Claimant was removed from service May 11, 1954.

On June 3, 1954 Claimant called on Messrs. Sencak and Austin who at that time, according to Carrier's statement expressed a willingness, in the event of a medical dispute, to submit the matter to a third doctor.

Claimant bases his claim here on the theory that Carrier unnecessarily delayed medical examinations and reports to the detriment and deferment of Claimant being restored to duty. A careful examination of this record reveals that the delay was caused as much if not more by his own actions than by those of the Carrier. Carrier began negotiation for a third doctor on June 3, 1954 and the parties were unable to agree on a third doctor until some time later and there is nothing in the record to indicate that the Carrier was guilty of any deliberate attempt to postpone the selection of the third doctor. The neutral doctor's report was submitted on January 27, 1955 and Claimant was restored to duty February 1, 1955.

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 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 30th day of January, 1961.