

Award No. 10907

Docket No. MW-10829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it refused to permit Mr. H. H. Heath to return to his position as B&B Mechanic from August 30, 1957 to September 6, 1957, both dates inclusive;

(2) Claimant Heath be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant H. H. Heath, with seniority dating from March 7, 1929, was granted a leave of absence on August 2, 1954, in order to permit him to fulfill duties as an official (Assistant General Chairman) of the instant petitioning Organization. He had previously filled a similar position on an **intermittent basis**.

Mr. Heath was not re-elected as Assistant General Chairman in 1957, and, accordingly, he was relieved of his official duties with this Organization on August 1, 1957.

Consequently, at about 8:30 A. M. on August 28, 1957, Mr. Heath reported to Master Carpenter A. H. Pearson, advising that he (Heath) wished to return to his position as B&B Mechanic and that he had been examined by his personal physician and had been thereby pronounced physically fit to resume service as a B&B mechanic.

Claimant Heath was then advised that he would have to submit to a physical examination by the Carrier's physician and, upon being advised of the Claimant's willingness to do so, he was given the routine form authorizing examination by the Thompson-Brumm-Knepper Clinic at St. Joseph, Missouri.

Claimant Heath then immediately (August 28, 1957) presented himself for examination at the Thompson-Brumm-Knepper Clinic, consuming

OPINION OF BOARD: This is a dispute between the Brotherhood of Maintenance of Way Employees and the Chicago, Burlington and Quincy Railroad Company.

Claimant Heath was granted a leave of absence on August 2, 1954, in order to permit him to serve as an official of the petitioning Organization. Claimant was relieved of his duties with the Organization on August 28, 1957, he expresses his position as a B&B Mechanic. He advised the proper party that he had been examined by his personal doctor and had been pronounced physically fit.

Claimant was advised that he would have to submit to a physical examination by Carrier's physician. Claimant was approved by Carrier's medical examiners and was given the usual "ability to work" form. Claimant wanted to start work on August 30, 1957. Claimant was withheld from service pending approval of Carrier's medical examiners in Chicago. Such approval was expressed on September 6, 1957.

Claimant contends that Carrier acted arbitrarily and in contravention of the Agreement when it refused to permit Claimant to resume work August 30, 1957, and unnecessarily delayed authorization of Claimant's return to work until September 7, 1957.

Carrier contends that it had the right to a medical examination and that a requirement for the Chief Medical Officer to review the examination was not in violation of the Agreement.

Award 18380 of the First Division and Award 8535 of this Division are in point. We concur with the opinions expressed therein.

We believe that the Carrier, not only had the right, but the duty to determine the physical condition of Claimant. A delay of six days is not an abuse of discretion. In Award 8535 there was a delay of 14 days.

For the foregoing reasons, we believe the Agreement was not violated.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1962.