

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

MRS. ANNE B. BARBERA

**THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM:

(1) On January 23rd, 1962, Dr. Daniel G. Fischer, Medical Director of the NY NH & Hartford Railroad Company, New Haven, Conn. stated "she is not qualified to work where sitting is required." This statement had the effect of holding me out of service until April 16th, and

(2) unadjusted time claim appealed by General Chairman R. Farquharson to the Carrier "If a majority of physicians agree that Mrs. Barbera is able to return to her regular work, then she should be paid her regular daily wages commencing December 13, 1961," and also his opinion that after receiving favorable opinions from three competent medical authorities, dating back to Dec. 1961, under these circumstances was physically capable of performing her duties, and in all fairness to her, the claim should be paid, commencing Jan. 23, 1962 to April 16, 1962 when she was finally returned to work.

The dispute wherein Harold F. Hughes, Division Chairman appealed "in favor of Anne Barbera for all time lost at the Shop Clerk's rate, five days per week, commencing on January 23, 1962 until she returned to work on April 16th, 1962", and General Chairman R. Farquharson's appeal "in all fairness to her, the claim should be paid commencing Jan. 23, 1962 to April 16, 1962 when she was finally returned to work", had been appealed to the Carrier, the NY NH & Hartford Railroad Company and denied and unadjusted.

EMPLOYEES' STATEMENT OF FACTS: 1. May 7, 1961 — auto. accident; May 8th, 1961 (husband booked me off sick).

2. Sept. 1961 — Called Robert DeCesare, Head Clerk, Stamford Engine Off. told him doctor said I could return to work. Stated I had to go to Dr. Fischer, New Haven. He would let me know when. Called him several times, finally set date for October 16, 1961.

All of the facts and arguments contained herein have been affirmatively presented to Employee's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a stenographer in Carrier's employ, was injured in an automobile accident while off duty on May 7, 1961. On applying for return to work, Claimant was examined by Carrier's doctor on October 16, 1961, and again on January 23, 1962, who reported she was "not qualified to work where sitting is required."

Under date of February 20, 1962, the General Chairman wrote Carrier requesting that Claimant be examined by a neutral doctor under the procedure set forth in Rule 9 of the agreement between the parties, and furnished Carrier with copies of reports from Claimant's personal physician dated January 5 and 25, 1962, attesting that Claimant could return to work. Carrier agreed and the two doctors selected a neutral doctor who examined Claimant on March 28, 1962. In his report dated April 9, which Carrier received on Friday, April 13, 1962, the neutral doctor expressed the opinion that, while Claimant's history showed that she probably had a coccydynia and a cervicodorsal strain, she should be able to return to her regular work. Carrier restored Claimant to service on Monday, April 16, 1962.

The claim herein is for wage loss covering but a portion of the time Claimant was held out of service on recommendation of Carrier's doctor, namely, from January 23 to April 16, 1962. However, the record does not show that there was any unreasonable delay, attributable to the Carrier or otherwise, after the General Chairman requested that Claimant be examined by a neutral doctor under Rule 9. Consequently, we must deny the claim.

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

That the parties waived oral hearing:

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 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 9th day of October 1963.