

Award No. 11802
Docket No. MW-11148

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO AND WESTERN INDIANA RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it withheld Crossing Watchman John Martin from service between November 21, 1957 and March 14, 1958.

(2) The Carrier now be required to reimburse Crossing Watchman John Martin for the earnings he lost between November 21, 1957 and March 14, 1958 account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Because of a sudden illness which the claimant suffered on June 25, 1957, he was required to absent himself from his duties as a crossing watchman. Upon and following recovery from said illness, the claimant presented himself to his immediate superior (Mr. L. B. Kizer, Superintendent of Police), to the Carrier's Chief Surgeon (Dr. Westline) and to the Manager Employee Relations (Mr. R. H. Wendell), but was denied the right to return to work until March 14, 1958. The following quoted letter substantially sets forth the factual situation involved:

"Chicago, Illinois
December 13th, 1957

Mr. Nick Caputo
General Chairman
B of M of Way Employees
Chicago, Illinois

Dear Nick:

Referring to our conversation about returning to work.

On Nov. 21st I reported to my Superintendents office and was sent to Dr. Westline's office as ready to go to work. The doctor did not

duties of a specific class of railroad work for which the requirements vary greatly. Knowledge of the duties of each of these classes and the physical and mental requirements for each is necessary for proper determination. The Company's Medical Examiner has that required knowledge.

The law requires a carrier to exercise the highest degree of care in the operation of its trains. It must take appropriate measures to ascertain that its employe are physically and mentally fit to perform their duties. To satisfactorily meet this grave responsibility, it employs medical men under the supervision of a Chief Surgeon and must rely on his judgment and decisions. It cannot substitute the desires of others for his judgment and decision. In cases where there is reasonable doubt as to the condition of a man, it must be remembered that the safety of the public is paramount.

The Carrier places, as it must, that responsibility with its medical examiner and must abide by his decision and was, after such an illness as was involved in this particular case, entitled and compelled to determine that it was proper or improper for this man to return to work. It was fully justified in not returning Mr. Martin to work until he received from the Doctors connected with the State Hospital, under whose experienced care he was confined for about four (4) months, an Absolute Release as Recovered. When this was done, there was no delay in putting him back to work at a railroad crossing where proper performance of his work gave reasonable assurance of safety to the public traveling on trains as well as in other vehicles and pedestrians using that crossing.

The responsibility of the Chief Surgeon is great in his final determination of physical and mental fitness of individuals to perform the duties of the various railroad positions for which they are examined. He cannot be hampered in the procedures he, in good faith, and in the best interests of the employe, the public and the carrier, deems necessary to use in making proper determinations. There is no question in this case of the Chief Surgeon's right to determine the procedure, his good faith or his interest in behalf of the employe, the public or the carrier.

No provision of the effective Agreement was violated. The claim should be denied.

All data in support of the Carrier's submission have been submitted to the employe in writing or orally and made a part of the particular question at issue.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant worked as a crossing watchman. He became ill on June 25, 1957 and he was admitted to the Cook County Psychopathic Hospital. After an examination by hospital doctors, he was first sent to the Kankakee State Hospital where he remained in the hospital's diagnostic center until July 16, 1957, and he was then transferred to the Jacksonville State Hospital. He remained there until September 9, 1957 when he was provisionally permitted to return to his home until September 21, 1957 when he was to return to the hospital and appear before the medical staff for discharge consideration.

On November 21, 1957, Claimant reported to the office of the Superintendent of Police and requested that he be assigned to work. The Police Superintendent directed him to Carrier's Chief Surgeon's office for a physical examination in accordance with past practice. The Chief Surgeon told him that he would have to procure a copy of his hospital record.

Dr. David Slight, Superintendent of Mental Health Centers for the Department of Public Welfare of the State of Illinois, wrote to Dr. Ray Westline, Carrier's Chief Surgeon, on December 4, 1957, regarding Claimant's illness and condition; in part as follows:

"The patient was committed as mentally ill and was diagnosed: 'Chronic Brain Syndrome associated with Cerebral Arteriosclerosis with Psychotic Reaction in Remission.' In the hospital the patient's physical findings and laboratory reports were essentially negative. He received only custodial care at the hospital and was cooperative with the hospital routine. Upon discharge the hospital considered the patient improved and capable of resuming employment.

"He was seen by members of this clinic's staff on November 18, 1957. At that time our psychiatrist said, 'The patient appears in good remission. The clinical course is compatible with an acute brain syndrome secondary to impaired cerebral circulation. The patient is aware he was psychotic, but feels well now. He is taking Sparine: 50 milligrams b.i.d. He displays some somatic delusions about a feeling of fever within him as a result of a typhoid shot at Jacksonville Hospital.' This clinic recommended that the patient continue his medication with a private physician, and he will be seen here periodically for observation.

"The prognosis for the patient's recovery from the episode which precipitated his hospitalization is good. However, we cannot predict the future course of his arteriosclerotic condition."

On the basis of this report, Dr. Westline refused to reinstate Claimant until he "was given an Absolute Discharge as Recovered by the State Hospital." Claimant presented such an Absolute Discharge on March 12, 1958, he was given a medical examination and returned to service on March 14, 1958.

Employes contend that Dr. Westline was required to examine Claimant when he reported for work on November 21, 1957 and since he did not do so and kept Claimant out of service until March 14, 1958, Claimant is entitled to compensation for that period.

Dr. Westline had a right to request a report from the Superintendent of Mental Centers before examining Claimant. The nature of Claimant's illness was such that any prudent physician would want to see the hospital record. Dr. Slight's letter of December 4, 1957 does not show that Claimant had fully recovered. On the contrary, it states that Claimant was still under medication, that he was to "be seen . . . periodically for observation," and that the future course of his arteriosclerotic condition could not be predicted. This was not an absolute discharge of Claimant.

Employes rely heavily on a letter dated December 5, 1958 written by Dr. Slight to Mr. Nicholas Caputo, Employes' General Chairman. This letter, in part, reads:

"Conditional Discharge releases for one year are routine procedure and do not refer to the degree of recovery at the time of release. However, we are sometimes obliged to ask the hospital to grant an early Absolute Discharge as Recovered, in order for a patient to get his job back. This requirement is usually due to the misunderstanding of some

employers and company doctors regarding the meaning of Conditional and Absolute Discharge. Conditional Discharge is intended largely to place the facilities of their local mental health clinic at patients' disposal during their adjustment period.

"On November 18, 1957, when Mr. Martin was seen here by a psychiatrist, a psychologist, and a psychiatric social worker, the staff agreed that he was in good remission, and felt that there were no contraindications to reemployment. We so informed Mr. Wendell of the Chicago and Western Indiana Railroad's personnel department, and Dr. Westline, the company physician, by telephone. We also tried to explain regarding Conditional Discharge versus Absolute Discharge."

Whatever may be the routine procedure with respect to the issuing of a Conditional Discharge, the fact remains that a physician charged with the responsibility of protecting the safety of a Carrier's employes, its passengers and the public must exercise reasonable caution. If Claimant had fully recovered and the doctors of the Department of Public Welfare were so satisfied, there was no reason why he should not have been given an Absolute Discharge as Recovered. He was given such a discharge about three months after Dr. Slight wrote to Mr. Caputo.

There is nothing in the record to show that either Dr. Westline or the Carrier arbitrarily, capriciously or maliciously held Claimant out of service. In the absence of such a showing, Carrier had every reason and right to rely on the judgment of its Chief Surgeon.

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 Employes involved in this dispute are respectively Carrier and Employes 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.