

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

Mr. Talley Curtis should be promptly reinstated to his Signal Maintainer position at Bowling Green, Kentucky, with all seniority rights, vacation rights, and all other rights unimpaired, and paid for all time lost subsequent to November 21, 1958, due to the Carrier's action in arbitrarily and improperly holding Mr. Curtis out of service.
[Carrier's File No. G-226-9]

EMPLOYEES' STATEMENT OF FACTS: Mr. Talley Curtis was the regular assigned Signal Maintainer for this Carrier at Bowling Green, Kentucky. Mr. Curtis was off duty for several months during 1957 and the first part of 1958, following a surgical operation for repair of an inguinal hernia.

On April 17, 1958, Mr. Curtis was examined by the Carrier's District Surgeon, Dr. J. T. Bate, to determine if he was able to resume work at his regular Signal Maintainer position at Bowling Green, Kentucky. The examination revealed the presence of another hernia at the site of an old appendectomy scar, and also the presence of a small amount of sugar in the blood, which indicated the possibility of a diabetic condition.

On May 5, 1958, Mr. Curtis wrote Mr. R. L. Pearce, Signal Supervisor, and stated that he was ready to report to work on Monday, May 12, 1958.

On May 7, 1958, Mr. Pearce wrote Mr. Curtis and informed him that his case had been referred to the Personnel Department along with the report of District Surgeon Bate. The letter read as follows:

"I have your notice of May 5th, stating you will report for work Monday morning, May 12th.

Your case has been referred to the Personnel Department along with Dr. Bate's report, and we have been instructed by the man-

taining signals, the carrier would have been grossly negligent had it permitted him to return to work in face of the advice from its medical examiner concerning his condition. Carrier submits, therefore, that it did not act arbitrarily or improperly in holding Mr. Curtis out of service until there was no longer reasonable doubt as to his ability to safely perform the duties of a signal maintainer.

This case was discussed further with the General Chairman of the Signalmen's Organization on March 3, 1959. In view of the fact that Mr. Curtis had then been under treatment for his diabetic condition for approximately one year, carrier asked that it be furnished with a statement from his physician concerning his condition at that time. Such a statement was furnished by Dr. Green under date of March 5, 1959, attached as Carrier's Exhibit "DD." It will be noted Dr. Green stated Mr. Curtis' response to the use of Orinase had been most gratifying, with no side effects or toxicity, and his dosage had been cut from three to one or two tablets daily.

As there had apparently been an improvement in his condition, in order to be entirely fair to Mr. Curtis, Carrier then arranged to have him examined by a physician in Louisville who specializes in the treatment of diabetes, Dr. William C. Buschemeyer, for his opinion as to whether or not Mr. Curtis could be considered as having a mild degree of diabetes, if his condition was being adequately controlled, and whether or not in the opinion of Dr. Buschemeyer management would be assuming an undue risk in permitting Mr. Curtis to resume work as signal maintainer. Such examination was made on March 16, 1959, and reports covering are attached as Carrier's Exhibit "FF." When those reports had been received and considered by management, instructions were issued to permit Mr. Curtis to resume work, and he did so on March 26, 1959.

Carrier submits that so long as there was reasonable doubt concerning Mr. Curtis' ability to safely perform the important duties of a signal maintainer, it had no recourse but to hold him out of service, and that it did not act arbitrarily or improperly when it did so. To the contrary, carrier was under a moral obligation to the public, other employees, and the claimant himself to take the action that was taken. The claim of the employees is without merit and should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was a Signal Maintainer with headquarters at Bowling Green, Kentucky. He was out of service for several months during 1957 and the first part of 1958, following a surgical operation for repair of an inguinal hernia. On April 17, 1958, he was examined by the Carrier's District Surgeon, which revealed the presence of another hernia and a diabetic condition. Subsequently, the Claimant received treatment for his diabetes from his personal physician, and on July 11, 1958, underwent an operation for hernia. On October 23, 1958, his personal physician gave him a fit for service letter regarding his diabetes. On October 24, 1958, the Carrier's surgeon again examined the Claimant, which resulted in the personnel department notifying him on December 1, 1958, that due to his physical condition, he would not be permitted to return to work. In the interim, October 20, 1958, the Claimant's sick benefits had been stopped by the Railroad Retirement Board, because of his being able to return to work.

On December 9, 1958, Claimant returned to his personal physician and received a report that his physical condition was good, and he was not suffering from diabetes. Finally, on March 16, 1959, the Carrier had the Claimant

examined by the Carrier's Surgeon and an impartial diabetic specialist. As a result of this examination, he was authorized to return to service on March 30, 1959.

The Claimant contends he was arbitrarily and improperly held out of service from November 21, 1958 to March 30, 1959. It was the contention of the Carrier that his diabetic condition rendered him unfit for service.

The question presented is: Should Claimant have been restored to service in November, 1958, in light of conflicting medical authority as to whether he was fit for duty or not.

On December 9, 1958, claimant's personal physician gave a medical report to the effect that he was not suffering from diabetes. As of that date, two qualified medical authorities were in disagreement concerning claimant's physical condition. However, the record discloses that carrier was not apprised of the December 9 medical report until it was enclosed with the General Chairman's letter to the Director of Personnel of January 9, 1959. Thus, the conflicting medical opinions came to an issue between the parties on January 10, 1959. We are also of the opinion that it is the responsibility of the Carrier to have the employe examined by an impartial physician in order to resolve the matter rather than to permit the situation to "drift." An examination of Award 11802 is not inconsistent with this position. In that award the Carrier's surgeon requested a hospital report from the Claimant, which he failed to produce and was held out of service until this report was produced. The facts in the current claim show that the Claimant produced all hospital and medical reports when requested, and readily submitted to an impartial medical examination on March 16, 1959, when he was found fit for service. In these circumstances, we hold that claimant is entitled to compensation for time withheld from service beginning January 10, 1959, until date restored to service.

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 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 violated.

AWARD

Claim sustained for period January 10, 1959, until March 30, 1959, when Claimant was restored to service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.