

**Award No. 13523**  
**Docket No. CL-13887**

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD** DIVISION

**Kieran P. O'Gallagher, Referee**

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**PARTIES To DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5915) that:

1. Carrier violated the rules of the **Clerks' Agreement** when the local company doctor held Savino Muggeo out of service for **re-examination** by Chief **Surgeon** Mishler, who found Mr. **Muggeo** fit for duty, and

2. Carrier compensate Mr. Muggeo for one day's wages for each **day** he **was** held from service during the period September 26, 1961, through October 25, 1961, at the pro rata rate of pay of his position. (Claim #1340.)

**EMPLOYEES' STATEMENT OF FACTS:** Mr. **Savino** Muggeo was employed by the Erie-Lackawanna Railroad October 8, 1946. During his period of employment, he has had a recurrence of a bronchial ailment which is well known to the company doctors, as he has had several physical examinations. **In** each case, he was returned to service promptly. Mr. Muggeo became ill on August 31, 1961, and he **was** approved for work by his **family** physician to be effective September 26, 1961. Copy of Dr. Granito's statement is attached hereto as **Employees Exhibit "A"**. Carrier's Officer at **28th** Street Station, New York, N. Y. ordered Mr. Muggeo to report to company doctor at Jersey City, N. J. for examination. Dr. Moriarity suggested that Mr. Muggeo get **a** physical examination by his personal physician **including** an X-Ray. **This was** done by having him placed in St. Joseph's **Hospital** in the Bronx. **The** X-Ray having been made, Mr. Muggeo reported to Dr. Moriarity, the company's **local doctor**, who **held** him out of service. Dr. Moriarity at that time told Mr. Muggeo that he had tuberculosis and would have to be re-examined by Company Chief Surgeon Dr. Mishler at Cleveland, Ohio.

Mr. Muggeo was unable to meet with the Chief Surgeon on October 17, 1961 for personal reasons, but was examined on October 24, 1961, and he **was** found physically able to return to his regular employment. Mr. Muggeo **was** **OK'd** for work and reported and went to work on October 25, 1961. Mr. **Muggeo** could have worked the entire period involved.

This claim was **handled** in accordance **with** the established procedure **up to** and including the highest officer designated for handling employe matters. Claim **was** filed with **Mr. F. Diegtel, Assistant Vice President, Erie-Lacka-**

work but that he was placed on a diet and a **hypoglycemi** agent and that the doctor expected his situation would be promptly **corrected**.

"Apparently that expectation was realized because, after examination on June **13th**, the Chief Surgeon returned him to limited service.

"There is no valid basis for the claim.

"AWARD: Claim denied."

#### IV CONCLUSION

It has heretofore been shown that Petitioner's claim for dates subsequent to October 17, 1961 is without merit in any event. Award 9307 which is **just** one of many.

Carrier has further heretofore shown that Petitioner's claim, which is founded on the Physical Re-examination agreement, is without merit. It therefore followed that this claim is nothing more than a plea for **this** Board to grant equity. Awards 8067, 75'77, 8154, 7480, 7412 and 7068, cited, support the principle that this authority the Board does not have.

Carrier **has** also heretofore shown that the decision to hold claimant out of service was neither arbitrary, capricious nor **unreasonable**. It **was** based upon sound reasoning of learned **medical** men and **only** after comparing the diagnosis of four (4) learned and skilled medical men was claimant qualified for service by the Chief Surgeon. This Board has consistently held that it **will** not substitute its judgment for that of men schooled in the field of medicine. Awards 6816, 6764 and 6942.

The Carrier reiterates that the liabilities it is confronted with insofar as **the** physical condition of its employees is concerned are tremendous. **This** being as it is Carrier should have the absolute right to insure that every possible precaution is taken to **preclude** against injury to itself, its employees and the public. Awards 876, 6908, 8049, 8394 and many others. Carrier's right to **hold** an **employee** out of service **on** the bonafide diagnosis and advance of a physician **is firmly** supported by Awards 2096, 81'76, 8535 and 10907.

Finally, Carrier has shown that **the** conditions of the understanding on Physical Re-examination have either been met or are not applicable in **this** dispute. First Division Award 18733, SBA 133 Case **1109-47**, SBA 27 Case 1898-61 and SBA 427 Case 1789 are authoritative proof that this claim is without, merit.

Based upon the facts and authorities cited, Carrier submits **that** this claim is without **merit** and should be denied.

OPINION OF BOARD: On September **25, 1961**, the Claimant was **required** to undergo **physical** examination by a company doctor after having been out of service for a month account of **illness**. The examination by the company doctor, which included X-Ray resulted in the Claimant being withheld from service for re-examination by the Chief Surgeon, Dr. W. E. **Mishler**, at Cleveland, Ohio. This re-examination was held on October 24, 1961, and the Chief Surgeon permitted the Claimant to return to service with the proviso that he be **re-examined** in one year. The claim is based on the allegation that the company doctor at New York, Dr. **Moriarity**, had erred in his diagnosis when he held the Claimant out of service for w-examination by the Chief Surgeon,

and that an unreasonable time elapsed between Dr. Moriarity's order for a re-examination **by** the Chief Surgeon and the time that **said** reexamination was conducted.

In the first place the re-examination by Chief Surgeon **Mishler** was originally scheduled for October 17, 1961, and was deferred to October 24, 1961 at the request of the Claimant.

The Claimant alleges that since the Chief Surgeon ordered him returned to service upon re-examination on October 24, 1961, that Dr. Moriarity's diagnosis was incorrect.

**We** can find no reason to substitute our judgment for that of a qualified physician of many **year's** experience; neither do we find any evidence to support the **Claimant's** contention that too **long** a time elapsed between the data of Dr. Moriarity's examination (**September 25, 1961**) and the re-examination of the **Claimant** at Cleveland, **Ohio** by Chief Surgeon Mishler. A careful review of the current Agreement, the record and of Letter of **Understanding** dated **July** 24, 1948, identified as Memorandum Agreement No. 6 fails to reveal any basis for the claim in the light of the facts as shown and we must therefore 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 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 29th day of **April 1965**.