Award No. 13984
Docket No. CL-14504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5463) that:

(1) The Carrier violated the rules and provisions of the Clerks' Agreement when on January 28, 1963, and subsequent thereto, it declined to permit Mrs. Hollis M. Clark to return to her former position upon reporting for duty after leave of absence.

(2) Mrs. Clark be compensated at the daily rate of $18.94 for each and every work day in the work week of her former position from January 28, 1963, to May 8, 1963, inclusive.

EMPLOYES' STATEMENT OF FACTS: Prior to May 12, 1962, Mrs. Hollis M. Clark (hereinafter referred to as Claimant) was the incumbent of a position titled Steno-Clerk assigned to the office of the Supervisor of Telephones and Signals located on the first floor in the Centralized Traffic Control Building at Savannah, Georgia.

On May 12, 1962, Claimant suffered a heart attack and was hospitalized. After a seven weeks period of hospitalization she returned to her home for convalescence. During this period of hospitalization and convalescence she was under the care of her doctor, Doctor John C. Withington a specialist in internal medicine.

On May 14, 1962, Claimant's position was advertised as a "temporary vacancy" by the following bulletin:

"SEABOARD AIR LINE RAILROAD COMPANY
Office of Superintendent
Carolina Division

Savannah, Ga.
May 14th, 1962 D3
3140-Steno-Clerk (STS)

lack of preponderance sufficient to establish that it ever agreed to do so. The responsibility that a carrier owes to its employes, to the public, as well as with respect to its own liabilities are all calculated to preclude this Board from substituting its judgment for that of the carrier's with respect to such an involved matter as an employe's physical fitness to work."

We are concerned here with an employe who had suffered a severe heart ailment. She had undergone extensive hospitalization and convalescent treatment. After her absence from work for a period of several months due to this illness, she reported to the Supervisor of Telephones and Signals on Friday, January 25, requesting that she be allowed to resume work on the position she occupied prior to her illness and that she be allowed to report to this position Monday morning, January 28. As the record indicates, because she was not allowed immediately to go back to work on Monday morning following the request that she had made on Friday she, on that very date (Monday, January 28) instituted a time claim in the letter she wrote to the Supervisor of Telephones and Signals. Furthermore, even before she had time to receive the Supervisor of Telephones and Signals' letter of February 1, advising her of the decision of the Chief Surgeon, her District Chairman appealed that claim to the carrier's Division Superintendent. In the District Chairman's handling of this case (note his letters of February 1, and February 7, addressed to the Division Superintendent) he refers to a request that Mrs. Clark be examined by Assistant Local Surgeon, Dr. T. A. Peterson, in lieu of Local Surgeon, Dr. R. L. Neville. Although the carrier does not relinquish its right under such circumstances to designate which of its physicians an employe should report to, it should be noted that the only reason advanced by District Chairman for dissatisfaction with Dr. Neville is "as Mrs. Clark was kept waiting more than two hours at Dr. Neville's office." This remark as well as the dispatch with which her claim was instituted and appealed would seem to indicate a bit of impatience on Mrs. Clark's part.

When we consider that we have here an employe who was within a month of reaching her 65th birthday and who had sustained a serious heart attack approximately eight months beforehand; who wanted to return to a position where for many periods of time she would be the only employe in the office, a position where she would be required to stoop over file cabinets as well as go up and down stairs, it is clear that the carrier did **not** abuse its discretionary powers in holding her out of service for an additional period of time. The carrier was entitled to exercise a degree of precaution and discretion. There was certainly **nothing** unreasonable or arbitrary in carrier's action here as the record clearly indicates.

Carrier affirmatively asserts that all data used herein has been discussed with or is well known to the General Chairman of the petitioning organization.

Carrier respectfully requests that claim of petitioner be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 12, 1962, Claimant suffered a heart attack. After a period of hospitalization and convalescence, she was advised by her doctor, on January 23, 1963, that she could perform normal office duties. On January 25, Claimant requested that she be allowed to resume her Steno-Clerk position. She was directed to report to Carrier's Local Surgeon for a physical examination. The Local Surgeon found Claimant not sufficiently recovered from her attack to return to her former position. He recommended

that she not be allowed to return to that work. His decision was confirmed by Carrier's Chief Surgeon on January 29.

This dispute arose by reason of Carrier's placing in issue Claimant's ability to perform the duties of her former position, because, it alleges, she was unable to ascend and descend stairs or stoop to pick up objects off the floor. Petitioner asserts that Claimant had not informed Carrier's Superintendent that she would be unable to stoop or to ascend or descend stairs, however, it was not refuted that such conditions were requisites of the position sought.

A careful review of the record discloses that there was no substantial disagreement between Claimant's physician and Carrier's surgeons. The point of misunderstanding seems to have arisen because Carrier was not convinced that Claimant's physician understood that the position sought required Claimant to ascend and descend stairs, as well as stoop over at filing cabinets.

After being advised on two occasions by Carrier that it was Carrier's belief that no dispute existed between the doctors, Petitioner then furnished Carrier with a letter from Claimant's doctor, dated April 25, 1963, wherein it was stated that it was his opinion that Claimant could "stoop over and pick up things from the floor and is able to go up and down steps." The record does not disclose when Claimant's doctor formed this opinion.

On May 2, 1963, Carrier's Chief Surgeon approved Claimant for work at a vacant position on which she had bid and at which she would not be required to go up or down steps. She began work on this position on May 8, 1963.

The length of time involved in this claim begins on the date when Claimant sought reinstatement and ends on the date when she began work on the new job where she was the successful bidder. The claim presented asserts that Carrier's action violated the rules and provisions of the agreement and requests that Claimant be compensated for the period mentioned.

The record does not contain an opinion from Carrier's Chief Surgeon which is subsequent to Claimant's doctor's letter of April 25, therefore, we do not know if Carrier's Chief Surgeon would have agreed or disagreed with Claimant's doctor's opinion of her condition as of that date.

We find nothing in this record which tends to convince us that Carrier's action was arbitrary, capricious or discriminatory. It cannot be seriously argued that under the factual situations as have been described in the preceding paragraphs, Carrier could not reasonably require Claimant to submit to a physical examination. Neither can it be questioned that Carrier had the right to rely upon the advice of its medical experts. We find no evidence that Carrier violated the agreement or that it acted in an arbitrary manner in refusing to allow Claimant to return to her former position. On the contrary, we find Carrier's action to be a reasonable exercise of its reserved right to determine whether or not its employes are physically qualified to perform the work of a particular position. We will deny the claim.

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 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 23rd day of November 1965.

LABOR MEMBER'S DISSENT TO AWARD 13984, DOCKET CL-14504

The Referee indicates that there was no substantial disagreement between Claimant's physician and Carrier's surgeons. However, such characterization is obviously in error for the dispute was substantial enough to block Claimant's return to service for a period of some three and one-half months, i.e., from January 28, 1963 until May 8, 1963.

During that entire period the facts show that Claimant's personal physician, a specialist who had treated her for more than eight months, commencing at the most critical period immediately following her attack and continuing through her convalescence; who had given her most thorough and exhaustive tests, observed her progress and supervised her treatment, had reported that Claimant had recovered sufficiently to resume normal office employment. Carrier's surgeon obviously felt Claimant was not sufficiently recovered from her attack to return to her former position.

It seems to me that depriving Claimant of her contractual right to return to her former position and thereby causing her to suffer additional loss of some three and one-half months' compensation is quite substantial and that, particularly after repeated requests from the Organization, the Carrier should have established the three doctor panel to resolve the issue. Failing and refusing to do so when, contrary to the Award, it was evident that Claimant's personal physician and Carrier's physicians disagreed as to whether or not Claimant was "sufficiently recovered from her attack" surely constituted an arbitrary attitude and an abuse of discretion.

I therefore dissent to what I consider an erroneous decision.

D. E. Watkins
Labor Member

12-21-65