

Award No. 14132
Docket No. TE-13941

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(Formerly The Order of Railroad Telegraphers)

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated the Agreement between the parties when it refused to allow M. I. Schrontz, Agent-Operator at Oxford, Michigan, to work on his position from September 26 to October 27, 1961.

2. Carrier shall be required to compensate M. I. Schrontz for all wages lost (including overtime), plus vacation benefits, etc., from September 27 to October 27, 1961.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1955, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

M. I. Schrontz is regularly assigned to the position of Agent-Operator at Oxford, Michigan. On May 22, 1961, Mr. Schrontz suffered a coronary thrombosis. By September 20, 1961, Mr. Schrontz had made a complete recovery from this seizure, and was so advised by his personal physician. He had also recovered from an injured heel. Mr. Schrontz immediately advised the Superintendent that he wished to have a medical examination by a Company physician, and such was arranged and completed on September 26, 1961. The Carrier's physician decided that Mr. Schrontz was fit to resume duty on his regularly assigned position. However, this decision was not made until October 27, 1961, thirty-one days after the examination was completed.

The claim here is in behalf of M. I. Schrontz for pay for time lost from September 26 to October 27, 1961, account not being permitted to work on his assignment during that period. The claim was filed and handled in the usual manner up to and including the highest officer of the Carrier and has been declined.

POSITION OF EMPLOYES: Employees attach hereto and make a part hereof, Exhibits reflecting the handling of the claim on the property, as follows:

examined for return to work on September 26, 1961, by the company doctor. Included in the medical examination were an electrocardiogram and an X-ray of the fractured heel. The Chief Surgeon determined after an analysis of the electrocardiogram and the X-ray report, and taking into consideration the duties of position that Mr. Schrontz would assume when he went back to work, that an additional convalescence from the serious physical condition as well as the injury to the heel would be beneficial. The Chief Surgeon under date of October 23, 1961, authorized the Superintendent to return Mr. Schrontz to work. Mr. Schrontz commenced work on October 27, 1961.

Oxford is a one-man station except that a clerk is employed during the summer months. In 1961, the Clerk was furloughed as of September 20th. This station is the site of a large gravel pit; the Agent's duties are mostly in connection with the gravel shipments. He weighs all cars of gravel leaving the station, and he must check all the empty equipment, open top hopper cars, which is stored at Oxford. The freight office is on a high foundation, which means that the Agent must come down five or six steps to the ground level; he then walks on uneven ground 303 feet to the Scale House. There are no board walks, asphalt, or cement walkways. There are nine yard tracks in the gravel pit, the longest being 3,500 feet long. At times it is necessary for the Agent to walk the entire 3,500 feet over the uneven ground of the gravel pit. In 1961 the gravel pit operated until November 18th, at which time it was closed for the winter.

POSITION OF CARRIER: The Employees' Statement of Claim asserts that the Carrier violated the Agreement between the parties when it refused to allow the claimant to work on his position from September 26. However, the Board will note that September 26 was the day the claimant was examined by the Company physician, such examinations including X-rays of his fractured heel and an electrocardiogram. In this case, as in every case where X-ray and cardiographic examinations are involved, the prints have to be evaluated by persons competent in such work. The electrocardiograms are sent to an outside specialist for diagnosis. It is unreasonable for the employees to expect that a man who had suffered a fractured heel and a serious heart attack should be put back to work before these two vital reports could be properly assessed.

After the Chief Surgeon considered all the facts of the case, including the duties the claimant would have to assume when he went back to work, his decision was that the claimant could safely return to work on or about October 27. As stated above in Carrier's Statement of Facts, the Chief Surgeon, after the September 26 examination, felt that a further short period of convalescence was in order before Mr. Schrontz returned to work.

There is nothing in the record to support the contentions of the employees that the Carrier violated the Working Agreement in the instant case. The Third Division has denied a similar claim in its Award No. 8535, and the First Division has also denied similar claims involving heart cases, in Awards Nos. 11254, 11897, 18380 and 18861.

The instant claim should be denied as lacking any merit in itself or any support in the Working Agreement.

OPINION OF BOARD: The essential facts in the instant dispute are not controverted. Claimant, Agent-Operator at Oxford, Michigan, suffered a coronary thrombosis on May 19, 1961. While on leave of absence, he fractured his heel on July 19, 1961, requiring him to use crutches until the latter part of August.

Thereafter, upon advice from his personal physician that he had made a complete recovery, both from his coronary and fractured heel, the Claimant requested a medical examination by a Carrier physician. Said physical examination was scheduled and completed on September 26, 1961. However, a decision was not forthcoming from the Carrier's physician until October 23, 1961, authorizing the Superintendent to return the Claimant to duty. In turn, the Superintendent did not return the Claimant to work until October 27, 1961, a period of thirty-one days after the physical examination was completed.

Thereupon, the Organization filed the instant claim on behalf of the Claimant, seeking compensation for lost time during the period from September 26 to October 27, 1961.

At one point, the Carrier contends in its behalf that X-ray and cardiographic examinations were involved and, therefore, the prints were required to be evaluated by competent personnel. The electrocardiogram was then sent to an outside specialist for diagnosis and the report thereof was not returned until October 12, 1961.

However, at another point, the Carrier adopts a new tack and asserts that the Chief Surgeon felt that a further short period of convalescence was in order. His conclusion was that the Claimant could safely return to work on or about October 27. These two positions are somewhat inconsistent.

We recognize the discretionary right of the Carrier to require a physical examination prior to permitting an employe to return to duty following serious illness. (See Awards 8535, 14492 and many others.)

However, it appears to us, that the Carrier was dilatory during the period from October 12 to October 27, when the Claimant was finally restored to duty. Granted that the Carrier's Chief Surgeon was located in Montreal, Canada, nevertheless, a fifteen day interval was excessive, under the circumstances present herein. It is, therefore, our considered opinion that the Claim should be sustained to the extent of compensating the Claimant for lost time for one week.

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 to extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.