

Award No. 14389
Docket No. CL-14147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5387) that:

(1) Carrier violated the rules of the Clerks' Agreement when it held Mr. William Owens out of service and required as a condition of employment, that Mr. Owens sign certain blank Physical Examination Forms.

(2) Mr. Owens shall now be compensated for February 16, 19, 20, 21, 22, 23, 26, 27, 28, March 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, April 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13, 1962 at laborer rate of \$18.03 per day.

EMPLOYEES' STATEMENT OF FACTS: Mr. William Owens is regularly assigned to position of laborer, East St. Louis, Illinois. Work week is Monday through Friday. Rest Days are Saturday and Sunday. Hours of Service 7:00 A. M. to 4:00 P. M., with one (1) hour for lunch. Rate of Pay \$18.03 per day.

Mr. Owens was on sick leave from October 18, 1961 to February 7, 1962, under the care of his personal physician, Dr. A. M. Jackson, 1324 Missouri Avenue, St. Louis, Missouri. On February 7, 1962, Mr. Owens was given a medical release by Dr. Jackson approving and attesting to the fact Mr. Owens was in physical condition to return to work and perform the normal duties of his position. This medical release was taken by Mr. Owens to the Freight Office of the New York Central Railroad and given to Mr. Richard Brannon, Jr., Agent. Mr. Brannon arranged for an appointment for Mr. Owens to see the Carrier's Dr. V. P. Siegel on February 12, 1962.

On reporting to the office of Dr. Siegel, Mr. Owens was given two blank forms by the girl in the doctor's office and advised he was to sign the blank forms. Mr. Owens asked the girl why he was being asked to sign two blank forms without some explanation and prior to having been examined. The girl told Mr. Owens that this was a policy of the Railroad Company and he would

On May 15, 1962, appeal was taken from the decision of Mr. Brannon to Mr. P. B. Daniels, Transportation Superintendent. (See Exhibit C.) Mr. P. B. Daniels declined the appeal. (See Exhibit D.)

On July 2, 1962, appeal from decision of Mr. P. B. Daniels, Transportation Superintendent, was taken to the General Manager. (See Exhibit E.) The General Manager wrote the General Chairman under date of July 31, 1962, and asked that the time limits on the case be extended, which was granted. (See Exhibit F.) Under date of September 7, 1962, the General Manager wrote to the General Chairman declining the claim. (See Exhibit G.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant, a freight house employe at East St. Louis, Illinois, has been off duty since October 19, 1961, account personal injury received while away from Carrier's property. On February 12, 1962, Claimant Owens reported to the Agent at East St. Louis, Illinois, that he was ready to return to work.

Under Carrier's rules, any employe who has been off duty in excess of thirty days due to injury or sickness must be approved by Company Physician before being permitted to return to service. Claimant was furnished the necessary Form CS-6—Employe Physical Examination Order (Carrier's Exhibit No. 1), which was signed by him, in the space provided on the form, in the presence of Agent Richard Brannon, Jr., and completed and signed by Mr. Brannon as Employing Officer.

Carrier's rules also require that applicant for return to service again sign his name before the examining physician on Forms CS-1 and CS-6B (Carrier's Exhibits Nos. 2 and 3, respectively). Signatures on these forms are then compared by the examining physician with that on Form CS-6 to insure that the person to be examined is the one to whom the examination order was issued. Carrier has required this precautionary measure of comparison of the signatures to prevent the possibility that an examining physician could qualify a substitute for an employe and give approval for return to service of an employe who had not undergone the required examination.

Mr. Owens reported to Dr. V. P. Siegel, Company Physician, on February 12, 1962, at which time he was asked to sign the forms, in accordance with the rule of the Company, and he refused to do so prior to the examination. Dr. Compton, Dr. Siegel's assistant, was equally adamant in his position that he could not, under Company rules, examine Mr. Owens until he signed the forms.

On April 12, 1962, Agent Brannon took Mr. Owens to the office of Dr. Thomas J. Kelley, Company Physician at Wood River, Illinois, who qualified him for service, and he returned to work on April 16. It is significant that Mr. Owens did comply with the Company rule and sign the forms prior to the examination and completion of the forms by Dr. Kelley.

(Exhibits not reproduced.)

OPINION OF BOARD: At the time here involved Claimant Owens, a laborer, was regularly assigned to a Messenger-Chauffeur position at East St. Louis, Illinois. Claimant's duties required him to drive a panel truck between the various offices and yards—delivering mail, supplies and other

material used by the Carrier. Lifting and bending were necessary in the performance of Claimant's duties.

In October 1961 Claimant Owens suffered a non-service-connected back injury which was diagnosed as a ruptured intervertebral disc. He underwent a laminectomy (i.e. surgical removal of the posterior arch of a vertebra) on November 3, 1961. As a result of his injury, Claimant went on a 90 day leave of absence ending January 19, 1962. On February 9, 1962, while still off duty, Claimant made written application for a 90 day extension of his leave of absence (from January 19, 1962 to April 19, 1962) due to his physical condition. In support of this application, Claimant presented a letter (dated February 7, 1962) from his personal physician, Arthur M. Jackson, M. D. This letter stated that Claimant "has recovered and is now ready to return to work as of February 16, 1962. It is desirable that he be given light work [sic] that is, refrain from bending, lifting, squatting, sudden twisting, etc." Claimant's employing officer, Agent Richard Brannon, Jr., gave written approval to this application for extension of leave. Carrier's Secretary, Board of Pensions, approved said application on March 6, 1962.

Meanwhile, on February 12, 1962 — three days after he had filed application for extension of sick leave terminating April 19, 1962, based upon his personal physician's February 7 letter — Claimant Owens reported to Agent Brannon that he was ready to return to work. In support of this advice, Claimant presented the same physician letter which had been used for the application for leave extension.

Under Carrier's rules, any employee who has been off duty in excess of thirty days due to sickness or injury must be approved by a Carrier physician before being permitted to return to service. Accordingly, Claimant Owens was furnished Form CS-6 (Employee Physical Examination Order) which he signed in the presence of Agent Brannon, and which was then signed and completed by the Agent. The latter then made an appointment for Claimant to be examined on the same date by Carrier physician V. P. Siegel, M. D. Upon reporting to Dr. Siegel's office, Claimant was asked to sign Form CS-1 (Surgeon's Report of Examination) and Form CS-6B (Examining Physician's Certificate). Claimant requested that he be examined first, and that the forms be explained to him before he signed them. Claimant was advised it was Carrier policy for the employee to sign the forms before being examined. Claimant adhered to his position, whereupon Dr. Siegel informed Agent Brannon by telephone that he would not examine the Claimant under the circumstances. Claimant returned to the Agent's office the same day and related the events at Dr. Siegel's office.

No further effort was made at that time to examine Claimant Owens, who remained off duty. On February 15, 1962 Claimant advised his General Chairman of the difficulty and thereafter discussions took place between the General Chairman and the General Manager's office. On March 19, 1962 Claimant Owens filed a claim for wage loss sustained beginning February 16, 1962 (i.e., Claimant's daily rate for all working days, less the amount received as sick benefit pay). Meanwhile, it appears that Management representatives in East St. Louis referred the matter to the Carrier's Medical Director in Detroit, Michigan.

On April 12, 1962 Agent Brannon drove Claimant Owens to Wood River, Illinois to be examined by Carrier physician Thomas J. Kelly, M. D. The Organization asserts that after completing the examination, Dr. Kelly gave Claimant Form CS-6 B and stated Claimant would "have to sign to show that

you have been examined by me and are now ready to return to work." The Organization contends that with this explanation from the Carrier physician, Claimant Owens signed Form CS-6 B. On the other hand, Carrier contends that Claimant "did comply with the Company rule and sign the forms prior to the examination and completion of the forms by Dr. Kelly." In any event, it is agreed that Dr. Kelly approved Claimant Owens for return to service. Claimant resumed work on April 16, 1962.

Management's right to require Claimant to submit to physical examination by a Carrier physician, as a condition of reinstatement, is not at issue in this case. But the Organization contends it is not permissible to require Claimant to sign a "blank check" prior to the examination, without knowledge of what information the physician might place on the pertinent forms following the examination. It is asserted that the information later added to the forms by the physician might result in discriminatory treatment, thereby jeopardizing the employee's employment status. It is urged that Claimant Owens feared Dr. Siegel would not be wholly unbiased in his findings and resulting reports. The Organization maintains that Management violated Rule 33 (Investigation and Grievances) by holding Claimant out of service because the Carrier physician would not examine him unless he signed the subject forms prior to being examined.

Management points to its rules on employment procedure which provide that all applicants for physical examination must sign Forms CS-1 and CS-6 B before being examined, and that the Carrier physician will then compare such signature with the previously signed examination order form, for the purpose of preventing substitution of another person. Management also contends that an employee is not entitled to review a Carrier physician's findings before deciding whether to sign a form, because such findings can be challenged only by another physician. It is asserted that Claimant Owens' wage loss, if he was physically able to work, was due to his refusal to abide by a fair and just Carrier rule; and that there is no proof that Claimant was physically able to perform his regular duties during the period of the claim.

The Organization responds that if the purpose of having an individual sign the subject forms is for identification, such purpose can be accomplished after the examination as well, thus allaying any fears the employee might have. The Organization disagrees that employees are, in fact, required to sign blank forms before examination. It also is contended that Claimant Owens was never advised in Dr. Siegel's office that the reason for requesting Claimant to sign the forms was for the purpose of identification.

Careful consideration of the argument and evidence presented leads to the following observations: Printed immediately below the space for the applicant's signature on Form CS-1 (one of the two forms Claimant refused to sign prior to examination) is the following language: "Applicant's signature to be affixed in presence of examining surgeon and compared with signature on examination order." Immediately below the corresponding space on Form CS-6 B (which Claimant also refused to sign beforehand) is the printed language: "Must be signed in the presence of Examining Physician." Both forms carry symbols referring to the New York Central System. Thus Claimant Owens had reason to know that the request that he sign these forms was a Carrier requirement, rather than a personal whim of Dr. Siegel, the Carrier physician. The printed language on Form CS-1, at least, specifically put Claimant on notice that the purpose of the signature requirement was to identify him as the individual for whom the examination order had been executed by an employing officer of the Carrier.

It is a proper exercise of managerial discretion to seek protection against the possibility that a physical examination is taken by a substitute for the applicant. Moreover, we find no bar, either in the contract or on general grounds of due process, to a requirement that the applicant for an examination identify himself before the examination. We know of no sound reason why a Carrier physician should be expected to conduct a medical examination before assuring himself that he is examining the proper person.

The "blank check" theory advanced by the Organization bears no analogy to the present case. It is illogical to suggest that Claimant Owens' signature on the subject forms indicates concurrence with the Carrier physician's medical findings, or that such signature obligates the Claimant to accept whatever findings the physician subsequently records on the forms.

It is quite clear that the reason for Claimant Owens' refusal was his desire to ascertain the medical findings which the Carrier physician recorded on the forms, so that Claimant could determine whether he wished to sign them. But since Claimant's signature would not attest to the accuracy of said findings nor indicate acceptance thereof, his refusal to sign said forms before the examination cannot be logically defended. We must agree with the Carrier that Claimant's loss of wages, assuming he was able to work as of the beginning date of the claim, was due to his refusal to comply with a rule which Carrier was entitled to enforce. We therefore conclude that the claim is without merit.

Our Award 11172 (Coburn) has been cited in support of the Organization's position in the present claim. In that prior case, however, we found various Carrier procedural errors which were of sufficient magnitude to warrant setting aside the discharge penalty there assessed. In addition, Claimant's refusal to sign the medical form was based on advice of counsel and the fear that his rights under a pending lawsuit for a service-connected injury would be jeopardized. These factors do not appear in the present case.

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 Employee involved in this dispute are respectively Carrier and Employee 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 5th day of May 1966.

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