

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL 5745) that:

1. Carrier violated the Clerks' Rules Agreement at Winona, Minnesota when it refused to permit Employee Betty J. Anderson to work her regularly assigned position of Cashier.
2. Carrier shall now be required to compensate Employee Betty Anderson at the rate of Cashier Position No. 4590 at Winona, Minnesota for each day she was denied that position during the period March 9, 1964 up to and including March 13, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** Employee Betty J. Anderson is the regularly assigned occupant of Cashier Position No. 4590 at Winona, Minn. in Seniority District No. 37. Position No. 4590 is assigned Monday through Friday, with Saturday and Sunday rest days at a rate of pay of \$20.4384 per day.

Employee Betty Anderson entered St. Mary's Hospital at Rochester, Minn. on February 11, 1964 for a back ailment and was a patient there until February 21, 1964 when she was released with the understanding she was to stay at home for another week and could then return to work.

Employee Anderson reported for and was permitted to resume work on her regularly assigned Cashier Position 4590 on March 2, 1964. She was not requested to furnish a release from the doctor before being returned to service; however, when she returned to service on Monday, March 2, 1964, she voluntarily presented to Agent Doumas a statement from her doctor dated February 24, 1964 copy of which is submitted as Employees' Exhibit "A".

"B" is a copy of a letter written by Mr. Amour to Mr. Gilligan under date of March 9, 1965.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was the regularly assigned occupant of a Cashier Position at Winona, Minnesota, with workdays Monday through Friday.

Claimant entered St. Mary's Hospital at Rochester, Minnesota, on February 11, 1964 for a back ailment. She was confined there until February 21, 1964, when she was released with the understanding she was to stay at home for a week before returning to work.

Claimant reported for and was permitted to resume work on her position on Monday March 2, 1964. At that time she voluntarily presented to the Agent the following statement from her Doctor, dated February 24, 1964:

"This is to certify that Mrs. Harris Anderson has been a patient at St. Mary's Hospital, Rochester, Minnesota, from February 11 to February 21, 1964. She has a problem with a recurrent lumbar disc.

"We have advised a conservative program of treatment which includes the use of physical therapy, a supportive garment, and the avoidance of abuse of the back. **Consideration should be given to her in regards to her work requirement because of the recurrent nature of her back problem.** (Emphasis supplied.)

She worked her position until Friday, March 6, when she was verbally advised by the Agent what he confirmed in the following writing which he handed to her on Monday, March 9:

"Please be advised that due to your being under doctors care because of your back condition, that you will not be able to return to your position of Cashier at Winona Minn until such time as you are able to obtain from your doctor a report on your condition which is satisfactory to our Chief Surgeon in Chicago."

Carrier's Chief Surgeon caused Claimant to be held out of service until her Doctor, in a further report, clarified the sentence in his February 24 report which we emphasized, *supra*.

On March 10, Claimant handed the Agent the requested further report from her Doctor. On Friday afternoon, March 13, the Agent telephoned Claimant and advised her: (1) the letter from her Doctor was satisfactory; and, (2) she could return to work on Monday, March 16.

The Claim is for loss of wages during the workweek she was held out of service — March 9 through 13.

It is the contention of Petitioner that after Claimant returned to service and for a week demonstrated that she was capable of performing all the duties of her position there was no Rule in the Agreement permitting Carrier to hold her out of service for the given reason. Further, Petitioner alleges

that Carrier's action "was arbitrary, capricious and in violation of the Agreement."

It has been well settled by many prior Awards of this Board that an employe may properly be held out of service pending medical examination if a carrier has reasonable grounds to question or be in doubt as to the employe's physical fitness. This is predicated on the premise that Carrier has the obligation to see that an employe is physically capable of performing his duties without hazard to himself, his fellow workers, or the public in general. We find nothing in the Agreement before us which restricts Carrier in the exercise of the prerogative.

The emphasized sentence in the February 24, statement of Claimant's Doctor, *supra*, we find created a reasonable doubt as to Claimant's physical ability to perform the duties of her position *in futuro* without running the risk of recurrence or aggravation of her back problem. Under the circumstances prevailing the Carrier acted prudently and in the best interest of Claimant. We, therefore, will 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 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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schuly  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1966.