



Award No. 15370

Docket No. SG-14791

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rules 70 and 71.

(b) Mr. A. W. Skelton be compensated for eight (8) hours at the signalman's rate of pay of \$2.7288 per hour for each of the following dates; March 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, April 1, 2, 3, and 4, 1963. [Carrier's File: 011-221-S]

EMPLOYEES' STATEMENT OF FACTS: This dispute is based on our contention that Carrier should be required to compensate Signalman A. W. Skelton for the time he was off work from March 18 thru April 4 1963, while undergoing physical examination and tests in the Southern Pacific Hospital at Tucson, Arizona, and that such compensation is payable under Rules 70 and 71 of the Signalmen's Agreement. Briefly, the events that preceded the initial filing of this claim are as follows:

Mr. Skelton had been visiting his personal doctor who has submitted a written statement to the effect that he was treated for sinusitis on January 21, 22, 23, 24, 25, 26, 28 and 29, 1963. A copy of that statement is attached hereto as Brotherhood's Exhibit No. 1.

The Carrier's Signal Supervisor, Mr. H. A. Garrett, seemingly took exception to the fact that Mr. Skelton went to his personal doctor instead of to a company doctor, and he advised the Division Engineer that Mr. Skelton was subject to dizzy spells and was a potential hazard on the job.

In the meantime, Mr. V. J. Dougherty, the Signal Foreman for whom Mr. Skelton worked, sent him to the company hospital at Tucson in January, 1963, and to a company doctor at Benson, Arizona, in February 1963, because he complained of a headache.

On the basis of the Signal Supervisor's statement that Mr. Skelton was subject to dizzy spells, and despite his (Mr. Skelton's) protest that he had

Alex Watson Skelton (hereinafter referred to as the claimant) was employed March 24, 1944 as track laborer on carrier's Tucson Division. On May 16, 1944 he transferred to position of assistant signalman and resigned October 31, 1944. He was re-employed as assistant signalman January 8, 1945 and resigned July 20, 1946 account ill health. On February 27, 1947 he was again re-employed as assistant signalman and on September 16, 1947 was promoted to signalman. Except for absence November 1, 1958 to June 10, 1960 account injuries sustained in an automobile accident, he has continued and is still in carrier's employment.

Following claimant's absence account illness during the last two weeks of January 1963 and on February 1, 4, 5 and 11, 1963, and upon receipt of oral reports that he was suffering from dizziness, headaches and had a very flushed appearance, it was considered that because of working off the ground on poles and ladders in the discharge of his duties, a physical examination was indicated for the safety of himself and others. Claimant reported to Southern Pacific Hospital at Tucson, Arizona on March 18, 1963 and was discharged April 4, 1963 to return to duty. Copy of report of May 13, 1963, by Dr. W. C. Finn covering claimant's hospitalization is attached as Carrier's Exhibit A.

Under date of April 16, 1963, petitioner's local chairman submitted claim heretofore noted to carrier's superintendent. The claim was denied by letter of May 6, 1963 from carrier's superintendent to petitioner's local chairman. Petitioner's local chairman advised carrier's superintendent under date of May 18, 1963 that his decision would be appealed.

By letter June 11, 1963 (copy attached as Carrier's Exhibit B), petitioner's general chairman appealed the claim to carrier's assistant manager of personnel. As carrier's assistant general manager is designated as the highest officer to hear such disputes, matter was referred to him and the claim was denied by him by letter June 17, 1963 (copy attached as Carrier's Exhibit C), to petitioner's general chairman. Under date of June 26, 1963, petitioner's general chairman advised carrier's assistant general manager that his decision was not acceptable and his entire file was being sent to the Grand Lodge for further handling.

On March 9, 1964, carrier received copy of petitioner's notice of March 4, 1964 to the Board, advising of its intention to file an ex parte submission and on March 16 received the Board's notice of March 11, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 18, 1963, Carrier required and ordered Claimant to report for physical examination at the Southern Pacific Hospital in Tucson, Arizona. Claimant was released from the hospital on April 4, 1963.

The Employees contend that Carrier should be required to compensate Claimant for the 14-days that he did not work during this period; that such compensation is payable under Rules 70 and 71 of the Signalmens' Agreement. They read as follows:

"RULE 71. EXAMINATION.

Such examinations or re-examinations as employees may be required to take, shall, if possible, be conducted during regular working hours without deduction in pay therefor."

"RULE 70. LOSS OF EARNINGS

An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

Carrier alleges that it had received oral reports that Claimant suffered from dizzy spells and had flushed appearance; that Claimant had been absent account illness under care of personal physician last two weeks of January 1963 and first three days February 1963; that based on above had right to require or order physical examination for Claimant as long as it was not acting arbitrary or capricious, in that it has an obligation to its employes and to the public to operate safely; and, that for the above reasons, Claimant was not entitled to compensation for time spent taking the examination nor for work lost as Rules 70 and 71 do not support the claim.

It is significant, from the facts of the Record, that the Signal Foreman, for whom Claimant worked, sent him to the company hospital at Tucson in January 1963 and to a company doctor in Benson, Arizona, in February 1963. Neither occasion did the company hospital nor the company doctor find it necessary to hospitalize him or require an extensive medical examination. It is apparent he had been cleared of any physical defect which would in any way interfere with his regular occupation and was so working at his regular job at the time Carrier ordered him into the company hospital at Tucson on March 18, 1963. Claimant has at all times been adamant in denying that he suffered from dizzy spells, flushed appearance, etc., which is evidenced from Carrier's own Exhibit A,—Claimant's medical report. Nor at any time has Carrier argued that Claimant was not performing his work as assigned or physically unable to do so, subsequent to the examination by the company doctor at Benson, Arizona in February 1963.

After a careful review of the record we do find that Carrier was arbitrary in ordering the Claimant to the company hospital for examination. Commitment was based upon an "opinion" and on an assumption or "understanding" (see medical report, Carrier's Exhibit A) through no fault of his own, rather than upon competent medical advice by a company doctor or by personal request. From these facts then, we are of the opinion that the instant case is distinguishable from Award 15263 (First Division) cited by Carrier as Claimant in that case was ordered into the company hospital by a company doctor and a different rule was in issue.

We find therefore, that under the circumstances of the instant case claimant was wrongfully deprived of work on those dates set forth in claim (b) and is entitled to be paid for those dates at the Signalmen's rate of pay of \$2.7288 per hour and that Carrier did violate Rules 70 and 71 of the current Signalmen's Agreement.

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 the Carrier did violate the Agreement.

AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1967.

**CARRIER MEMBER'S DISSENT TO AWARD 15370,
DOCKET SG-14791 (Referee Mesigh)**

The medical report referred to in the next to the last paragraph of the Opinion contains this statement:

"The length of time in the hospital was necessary for a real thorough check-up in view of the letter from Supt. McCann, to be certain there were no organic or pathological conditions present which would interfere in this man's performance of his duties so far as his own safety and the safety of others was concerned."

The sustaining Award is based on the premise that the "opinion" or "understanding" voiced in Superintendent McCann's letter, rather than any physical ailment of the Claimant, was the cause of Claimant's long detention in the hospital, and further that the Superintendent had no reasonable basis for such "opinion" or "understanding."

Significantly, Claimant was ordered in for examination because of his flushed appearance and reports of headaches and dizziness, and the fact that his duties required that he climb signals and signal poles. Claimant adamantly denied to the examining doctors having ever had a flushed appearance, headaches or dizziness and also told the doctor he did not climb poles, an integral part of a signalman's duties. Following admission to the hospital, Claimant was found to have a blood pressure reading of 210/110, abnormally high as indicated by a reduction to 142/94 the day prior to discharged. Other findings were tachycardia, an abnormal rapidity of heart action, lumbar preveture, which showed an abnormal opening pressure of 280, closing pressure 180; electrocardiogram which showed loss of T wave amplitude in the left ventricular lead, no "acute" injury on tracing; chest X-ray showing some chronic peribronchial thickening at the median bases and suggestive evidence of prostatic edema or hypertrophy.

We respectfully submit that the evidence reasonably indicates there was a need for this extensive examination, and the Award is erroneous in finding that Carrier was arbitrary.

We dissent.

G. L. Naylor
R. E. Black
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P. C. Carter
G. C. White

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