



Award No. 15592
Docket No. SG-12309

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company:

In behalf of Signal Foreman J. F. Mason for 8 days' wages (8/23 of \$503.13 or \$175.00) covering the period of July 6 through July 15, 1959, account the Carrier failed to comply with National Railroad Adjustment Board Award No. 8848 (Docket SG-10190), issued on June 18, 1959, when it refused to return Mr. Mason promptly to work after he passed his physical examination on July 2, 1959. [Carrier's File: 900-16-B-53]

EMPLOYEES' STATEMENT OF FACTS: Signal Foreman J. F. Mason was dismissed from the service of this Carrier on May 13, 1957. As a result of the Carrier's action in dismissing Signal Foreman Mason, an appeal was made to the National Railroad Adjustment Board, Third Division, the Statement of Claim reading as follows:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company that:

(a) The action of the Carrier in refusing to grant Signal Foreman J. F. Mason an extension of leave of absence while sick and under a physician's care, and the subsequent action of the Carrier in dismissing Signal Foreman J. F. Mason following an alleged impartial formal hearing, was of a capricious and arbitrary nature, in abuse of its discretion, and in violation of the current Signalmen's Agreement.

(b) The Carrier now restore Signal Foreman J. F. Mason with full seniority and other rights unimpaired and compensate him for each day at his respective Signal Foreman's rate of pay that he has been improperly held from work as a result of this unwarranted and unjust action taken by the Carrier."

Francis B. Murphy handed down Opinion and Findings in Award No. 8848 (Docket No. SG-10190), copy of which is attached as Exhibit A.

The Order to Accompany Award Number 8848 was received by Carrier's Manager Personnel and Safety on June 23, 1959. That same date Manager-Personnel and Safety W. G. Anderson addressed a letter to Superintendent of Signals, B. F. McGowan, transmitting a copy of the award and instructing him as follows:

"Will you please arrange to restore Mr. Mason to service promptly and in no event later than 30 days from June 18, 1959. He should, of course, be reexamined by one of our Examining Surgeons in accordance with Rule 4 of the Regulations and Requirements Governing Physical Examinations prior to reinstatement."

On June 27, 1959, Mr. Mason addressed a railroad message to Assistant Superintendent of Signals F. C. Bloch at Minneapolis, Minnesota, inquiring as to expected date of reinstatement as Signal Foreman. On June 30, 1959, Superintendent of Signals McGowan wrote to Mr. Mason at Waukesha, Wisconsin, advising that:

"By copy of this letter to Mr. Dablow, Trainmaster at Fond du Lac, we are requesting that he make an appointment for you to be examined at Fond du Lac by Examining Surgeon Dr. W. J. Waldschmidt as soon as it can be arranged. We are asking Mr. Dablow to advise you, c/o our Agent at Waukesha, the time and date of your appointment with Dr. Waldschmidt. Please arrange to comply with Mr. Dablow's request when the date is set."

In the meantime, Mr. Mason traveled to Minneapolis and contacted the office of Superintendent of Signals McGowan on July 2, 1959. Arrangements, therefore, were immediately made for examination that day by the Company's Chief Surgeon, Dr. Harvey Nelson. On the basis of this examination Chief Surgeon Nelson qualified Mr. Mason from a physical standpoint but reserved judgment as to his psychiatric condition. That same date, July 2, 1959, Chief Surgeon Nelson addressed a letter to Dr. Peter Bell, Chief of Psychiatric Services, Division of Corrections, State of Wisconsin, Madison 3, Wisconsin, where Mason had been confined. Copy of that letter is attached marked Exhibit B.

Dr. Bell replied to Chief Surgeon Nelson under date of July 15, 1959, copy attached marked Exhibit C.

Mr. Mason was reinstated as Signal Foreman of Signal Crew No. 1 effective July 16, 1959.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 2, 1959, Signal Foreman J. F. Mason presented himself for a medical examination at Minneapolis, Minnesota, and on the basis of this examination, Carrier's Chief Surgeon, Dr. Harvey Nelson qualified him to return to work from a physical standpoint but reserved judgment as to his psychiatric condition. Dr. Nelson sent a letter the same day to Dr. Peter Bell, Chief of Psychiatric Services, Division of Corrections, Madison, Wisconsin, requesting a report on Mr. Mason who had been confined to that institution. After receipt of the reply from Dr. Bell dated July 15, 1959, in which he stated ". . . we are certain that there are no attributes either physical or emotional at the present time existent which

would interfere with his successful execution of his position duties with the Soo Railroad," Mr. Mason was reinstated as Signal Foreman in Signal Area No. 1 effective July 16, 1959.

The Brotherhood makes claim on behalf of Mr. Mason for 8 days' wages for the period from July 6 through July 15, 1959, on the grounds that Carrier refused to return Mr. Mason to work promptly after he passed his physical examination on July 2, 1959.

Carrier denies the claim with the assertion that it reinstated Mr. Mason as promptly as it could after it ascertained that he was physically and mentally competent to return to a position of responsibility in the railroad.

In view of Mr. Mason's hospitalization for observation and treatment at a mental institution, Carrier understandably required a report from the physician under whose care he received psychiatric treatment. It properly did not regard the physical examination administered by Carrier's physician as a complete and adequate basis for restoring him to his position. The delay in securing this additional information was due to circumstances beyond Carrier's control, for Dr. Bell's absence in Europe prevented him from responding to the inquiry of July 2, until July 15. Since Carrier restored Claimant the day after it received the report from the psychiatrist, we find that it did act promptly.

We have decided this dispute on its merits and do not find need to review the jurisdictional question raised by Carrier member in panel discussion.

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 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 26th day of May 1967.