Award No. 16316
Docket No. SG-17289

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York, New Haven and Hartford Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, when it failed and/or refused to permit Mr. Daniel Tarasevich to return to work — or to grant the Brotherhood's request of April 28, 1966, that a neutral doctor be appointed to examine Mr. Tarasevich in connection with his request to return to service.

(b) Carrier be required to compensate Mr. Tarasevich at the Signal Helper rate of pay for eight (8) hours each regular work day commencing June 6, 1966, and continuing until he is permitted to return to work. [Carrier's File: Railroad Docket No. 10,545]

EMPLOYES' STATEMENT OF FACTS: This dispute involves an employe who, since January 30, 1963, has been out of service and on sick leave.

Early in 1966, Mr. Daniel Tarasevich decided he was physically able to return to work, and submitted to an examination by a Neurosurgeon, Dr. Donald W. Cooper, on January 17, 1966. The report after examination reads as follows:

"NEUROLOGICAL GROUP
350 Montauk Avenue
New London, Connecticut

NEUROSURGERY
David C. Cavicke, M. D.
Donald W. Cooper, M. D.

NEUROLOGY
J. William Healy, M. D.

January 25, 1966

TO WHOM IT MAY CONCERN:

Re: Daniel Tarasevich

The above patient was hospitalized from 2/10/63 through 2/15/63 for a possible mild disc protrusion with lumbosacral strain. He was

OPINION OF BOARD: Mr. David Tarasevich was employed as a Signal Helper between September 17, 1951 and January 30, 1963, when he reported off duty because of illness. In November, 1965, he bid for an advertised vacancy as Signal Helper.

Carrier required that he be examined by a company physician. On March 21, 1966, he reported for the examination to Dr. Roth, who found him physically unfit for work as a Signal Helper. Earlier, on February 24, 1966, Mr. Tarasevich presented to Carrier a statement, dated January 25, 1966, from his private physician, Dr. Donald W. Cooper. It said Mr. Tarasevich had been hospitalized from February 10, 1963, through February 15, 1963, for a possible mild disc protrusion with lumbo sacral strain, and after a follow-up visit in his office on April 4, 1963, the patient showed no disability and was physically qualified to return to work. The report also stated that the patient was re-examined on January 17, 1966, was found to have no disability, and was advised that he could return to his regular previous occupation.

Since the findings of Dr. Roth did not agree with those of his personal physician on March 28, 1966, Mr. Tarasevich requested that he be given an examination by a neutral doctor. The General Signal Supervisor rejected his request, stating that the medical conclusions of Dr. Roth were binding. On April 28, 1966, the General Chairman made another request in writing to the General Signal Supervisor for an examination by a neutral physician. Carrier again denied the request on June 6, 1966, and Mr. Tarasevich was not permitted to return to service.

Claim is made on behalf of Mr. Tarasevich that Carrier violated the Signal Agreement when it failed to permit him to return to work or to grant his request that a neutral doctor be appointed to examine him.

Carrier's denial includes the argument that the Agreement does not require that it grant a physical examination of employes by a neutral physician. It also questions the sincerity of Mr. Tarasevich's desire to work in view of the fact that when he was examined by Carrier's physician on May 28, 1963, and found fit for light work only, he failed to seek such work. In September, 1963, he instituted a claim against Carrier in which he alleged a permanent injury received in 1960 for which he was awarded a settlement of $5,000.00 in April, 1965. Carrier points out that Mr. Tarasevich disregarded the evaluation of Dr. Cooper on April 4, 1963, that he was ready to return to his regular work. Furthermore, Mr. Tarasevich applied for a disability pension under the Railroad Retirement Act in November, 1963, in spite of his private physician's findings that he was ready to return to work.

Although it is generally recognized that Carrier has the prerogative to determine the physical qualifications of its employes, it is expected that its decision be based upon reasonable medical certainty, and no man be disqualified arbitrarily or capriciously. There are instances in which medical findings are in conflict, as was true in the instant case. Before Mr. Tarasevich bid for the Signal Helper position in November, 1965, he was off duty for approximately two years. During this period, in examinations on March 8 and May 28, 1963, the company doctor found him fit for light work only. His own personal physician, Dr. Cooper, however, found him physically unfit for service. In March, 1966, the company doctor declared him physically unfit for work, whereas the same personal physician made a written state-

ment that Mr. Tarasevich suffered no disability and had his permission to return to his regular previous occupation and to bend, lift, dig and climb.

It is true that Mr. Tarasevich chose to disregard the advice of his personal physician when he applied for a disability annuity, but this action does not alter the fact that there is conflict of opinion of the two doctors. Under these circumstances we find there is need for additional medical data to determine the physical fitness of Claimant to return to work. Accordingly, we direct that on or before July 1, 1968, Carrier and Claimant or his representative select a neutral third doctor for the purpose of examining Mr. Tarasevich and that the company doctor, Claimant's personal physician and the neutral doctor present a written report to this Division of the National Railroad Adjustment Board on or before August 1, 1968, stating their conclusion as to the physical qualifications of Mr. Tarasevich for restoration to service as of March 28, 1966.

The final disposition of the claim by this Division shall be made after receipt and consideration of the medical report as directed above.

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

Remanded for additional medical data.

AWARD

Claim remanded to the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.