

Award No. 16603
Docket No. CL-16950

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**NORFOLK AND WESTERN RAILWAY COMPANY
(Involving employes on lines formerly operated by the
Wabash Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6286) that:

(1) Carrier violated the time limit provisions of Article V of the August 21, 1954 NATIONAL AGREEMENT when it failed to allow or decline a claim filed for time lost by Freight Handler Morris Montgomery working at East St. Louis, Illinois Freight House, within the prescribed sixty (60) days.

(2) The Carrier now be required to pay Mr. Montgomery eight (8) hours at the rate of his position as Freight Handler on each work day beginning on March 1, 1966 to June 20, 1966, both dates included.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Mr. Montgomery was assigned as a Freight Handler performing work at the Freight House, East St. Louis, Illinois, with a work week from Tuesday to Saturday, rest days Sunday and Monday, hours of assignment 8:00 A.M. to 5:00 P.M. with one (1) hour for lunch.

Mr. Montgomery's seniority date is September 26, 1945.

The Claimant, Mr. Montgomery laid off from work on February 25, 1966 and reported for work on February 26, 1966 but was sent home by Supervisor H. B. Roche.

February 27 and 28, 1966 was his rest days and Claimant reported for work again on Tuesday, March 1, 1966, was not allowed to resume his duties and was advised that before he could return to work it would be necessary that he have a physical examination.

Without questioning the right of Carrier to require a physical examination at this time under the working Agreement, or questioning Supervisor H. B.

to which Form MD 1-A dated April 28, 1966, was attached. Copy of that Form MD 1-A dated April 28, 1966, is attached hereto and made a part hereof, marked Carrier's Exhibit J. That letter was also returned to the supervisor marked "Unclaimed" and was finally delivered to Mr. Montgomery, personally, by an East St. Louis Freight Station employe on May 17, 1966.

Mr. Montgomery then reported to Sutter Clinic on May 18, 1966. Dr. C. C. Potter of that Clinic showed, in part, as follows on Form MD-1 following the examination:

"If rejected, Cause 'Vision Poor - Intemperate - Hypertension - Neuritis - Albuminuria.'

I do hereby 'do not' approve applicant as physically qualified.

Place and Date of Examination **'Sutter Clinic, May 18, 1966.'**"

Complete copy of that form prepared by Dr. Potter is attached hereto and made a part hereof, marked Carrier's Exhibit K. As a result of Dr. Potter's findings, Mr. Montgomery was disqualified by Dr. C. M. Benage, Regional Medical Director on May 24, 1966.

After Mr. Montgomery furnished the following from Dr. H. J. Erwin, 1419 North Grand, St. Louis 6, Missouri, dated June 8, 1966:

"This will certify that Mr. Montgomery has been under medical treatments for acute illness from 3-2-66 to present date. Examination reveals he has recovered and able to resume duty 6-9-66."

he was examined and physically qualified for service by Dr. Benage on June 20, 1966, who showed, in part, as follows on Form MD-2 concerning that examination:

"Cause of latest disability 'Off because of inebriation.'

Present findings 'Appear alert, coordinated and in satisfactory condition to do work.'"

Complete copy of that form is attached hereto and made a part hereof, marked Carrier's Exhibit L.

Mr. Montgomery returned to work on June 21, 1966.

Copy of all of the correspondence had between the representatives of the parties is attached hereto and made a part hereof, marked Carrier's Exhibit M.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim as submitted to the Division is that the Carrier violated the time limit provisions of Article V of the August 21, 1954, National Agreement when it failed to allow or decline a claim filed for time lost by Claimant within the prescribed sixty days.

Compensation is sought for Claimant for eight hours at the rate of his position as freight handler on each work day beginning on March 1, 1966, to and including June 20, 1966, during which period he was withheld from service.

The record shows that on March 16, 1966, the Local Chairman of the Organization wrote the Supervisor alleging a violation of Rule 17, paragraph (a) of the Agreement, and concluding the letter by stating:

"We ask that Mr. Montgomery be returned to work immediately and paid eight (8) hours at the pro-rata rate for Tuesday, March 1, 1966 and every day thereafter that he is held from service."

On April 12, 1966, the Supervisor responded to the Local Chairman, but the Petitioner contends that the Supervisor's letter of April 12, 1966, did not constitute a denial of the claim. On May 17, 1966, the Local Chairman appealed to the Superintendent alleging a violation of Article V of the Agreement of August 21, 1954, by the Supervisor. On July 5, 1966, the Superintendent denied the claim. In the meantime the Claimant had been restored to service on June 21, 1966.

We agree with argument by and on behalf of the Petitioner that the Local Chairman's letter of March 16, 1966, constituted a claim on behalf of the Claimant under the provisions of Article V of the Agreement of August 21, 1954. We likewise agree with the Petitioner that the Supervisor's letter of April 12, 1966, did not constitute a denial of the claim. The claim was denied by the Superintendent on July 5, 1966, in excess of sixty days from March 16, 1966. The claim must, therefore, be allowed to the date Claimant was restored to service on June 21, 1966. We do not pass upon the merits of the dispute.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.