



Award No. 16947  
Docket No. SG-17697

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John B. Criswell, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

On behalf of Signal Maintainer Francis W. Lowell for pay for all time he lost after July 5, 1966, because of being improperly held out of service.

**EMPLOYEES' STATEMENT OF FACTS:** This dispute involves an employe who — in spite of a favorable medical opinion and report by his personal physician, has been withheld from service since July 5, 1966, allegedly because of his physical condition, without being seen or examined by the Railroad Company's Chief Surgeon, who is the person responsible for the employe not being allowed to return to service.

On December 2, 1965, Signal Maintainer Francis W. Lowell was disabled with coronary thrombosis and was treated at Wyoming County Community Hospital, Warsaw, N. Y. for 3 weeks.

After discharge from the Wyoming County Hospital, his recovery was excellent, and on July 5, 1966, following an examination by Doctor D. R. Insley, who had attended him during his illness, he wrote the Carrier as follows: (Brotherhood's Exhibit No. 1)

"This is to inform you that I have been discharged by my Dr. after being on sick leave since December 2, 1965.

Dr. Donald Insley, Main Street, Nunda, New York has declared me ready to assume the duties of my regular work.

Will you kindly advise me what my next step is to return to work.

I will appreciate your cooperation in this matter and will expect to hear from you soon.

Thanking you, I am"

In a letter dated July 11, 1966, Carrier informed Mr. Lowell he had been physically disqualified for all service since June 20, 1966 by Chief Surgeon, Dr. W. E. Mishler. (Brotherhood's Exhibit No. 2)

The above patient has been under my care since 12/2/65. He has been, because of conditions listed above, totally disabled and I do not expect he will be able to return to his usual duties at work until 7/1/66.

Yours truly,

/s/ Dr. D. R. Insley"

This report was forwarded to Carrier's Chief Surgeon Dr. W. E. Mishler, who with these facts before him and his knowledge of the nature of claimant's duties and responsibilities as a Signal Maintainer, Dr. Mishler sent the following letter to the Division Engineer at Buffalo, New York, disqualifying Mr. Lowell for all service.

"June 20, 1966

Mr. B. H. Dexter

Dear Sir:

Refer to your file covering Mr. Francis W. Lowell, Signal Maintainer, Buffalo, N. Y.

This is to advise that he is disqualified for all services. Authorization for extension of leave of absence authorized to date.

/s/ W. E. Mishler, M. D.  
Chief Surgeon"

Mr. Lowell and General Chairman W. D. Wilson were notified of the disqualification under dates of July 11 and 21, 1966 respectively (Carrier's Exhibits A and B.)

On November 1, 1966 the instant claim was filed with G. V. Milanoski, Signal Supervisor, Buffalo, New York. Claim was denied on November 28, 1966 and thereafter handled on appeal up to and including Carrier's highest officer. The case was discussed in conference on March 3, 1967 and denied. Attached as Carrier's Exhibits C through E are copies of subsequent handling of the case on the property.

There is no dispute between the claimant's family physician and the chief surgeon concerning the medical facts of claimant's condition. That this is so is evidenced by the fact that the Organization did not process this case under established procedure as set forth in the "Understanding on Physical Re-Examinations" found on Page 50 (Carrier's Exhibit F) of the applicable agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On December 2, 1965, Claimant suffered a coronary occlusion. He was hospitalized for three weeks and returned home to convalesce. On July 5, 1966, Claimant wrote Carrier that he had been discharged by his physician who declared him ready to assume his regular duties.

Claimant then learned that the Chief Surgeon — who had not examined him — had written a letter of disqualification during the preceding month.

The Chief Surgeon's actions in this matter are not altogether different from those in Award 16926 (McGovern) when this Board held that he acted in an arbitrary manner.

However, the Record reveals no effort to follow the procedure provided in the Agreement Addendum "Understanding on Physical Reexaminations."

We do not know if, as in Award 16926, the Chief Surgeon would have indicated a refusal to follow the Agreement, which provides:

"... If still dissatisfied, the General Chairman may arrange with the Chief Surgeon for further handling of the case between the Chief Surgeon and the employe's family physician. If thereafter it is desired to further progress the case, the Chief Surgeon and the family physician of the employe will arrange for a neutral physician (qualified as an expert in the field of medicine concerned and qualified by the American Board or equally rated society), who will re-examine the employe. The decision of this neutral will be considered final."

This course of action, to be initiated by the General Chairman, was not followed, and this Board must 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 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 6th day of February 1969.