

 Award No. 18797

Docket No. CL-19139

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6876) that:

(a) Carrier violated the rules of the Clerks' Agreement at Memphis, Tennessee, when it refused to allow Clerk C. E. McKnight compensation for time lost on twenty-five (25) days in the period December, 1968 to January, 1969, inclusive, and necessary expenses incurred while he was undergoing physical examinations on orders of the Carrier.

(b) Mr. McKnight shall now be compensated on twelve (12) days in December 1968 at \$27.07 per day and on thirteen (13) days in January, 1969 at \$27.61 per day. (The difference in the rates represents a general wage increase of 2% effective January 1, 1969.)

(c) Mr. McKnight shall now be compensated \$40.61 on December 25, 1968 and \$41.42 on January 1, 1969, in addition to the straight time claimed in part (b) hereof. Both dates are recognized holidays on which the claimant would have received the time and one-half rate had he worked.

(d) Mr. McKnight shall now be reimbursed for \$73.00 expenses incurred while enroute to the Chicago I. C. Hospital, his confinement therein and his return home.

EMPLOYEES' STATEMENT OF FACTS: Employees of the Illinois Central Railroad, as a condition of employment, are required to become and remain members of the Illinois Central Hospital Association. The monthly dues are paid in part by the Carrier and partly by payroll deductions from the employees' earnings. The Hospital Association maintains two hospitals, one at Chicago and one at New Orleans, with Association physicians located at most of the towns between.

On October 22, 1968 the Claimant, Mr. McKnight, was granted a leave of absence, due to illness, by Superintendent Hall to cover the period October

of absence that began July 31, 1968, and was subsequently extended to expire on January 27, 1969, to allow for recovery from an operation in July, 1968, for a peri-rectal abscessory. On December 15, 1968, prior to the expiration of his leave of absence, Mr. McKnight informed the Chief Clerk at Memphis that he had obtained a release from the company's local physician, Dr. C. W. Parrott, and that he was ready to return to work (Company's Exhibit A). The Company, however, did not accept this release as conclusive of his physical condition and ordered Mr. McKnight to take a special physical examination on December 17, 1968 which was administered by Local Surgeon Shelton. As a result of this special physical examination Mr. McKnight was found not qualified to return to the service (Company's Exhibit B). Consequently, records of Mr. McKnight's December 17, 1968 examination were forwarded to the office of Dr. Harry L. Hunter, Chief Medical Officer, Chicago, and on December 31, 1968, Mr. McKnight was advised to report to the Illinois Central Hospital for further examination beginning January 16, 1969. (Company's Exhibit C). For some unknown reason Mr. McKnight left Memphis considerably in advance of January 16, 1969, and was admitted to the IC Hospital upon his arrival on January 2, 1969. He was discharged January 4, 1969. By letter dated January 14, 1969, Dr. Hunter advised the Office of Superintendent, Memphis, that as a result of his examination, Mr. McKnight was found physically qualified to return to work. Mr. McKnight was so advised of this fact on the afternoon of January 16, 1969, but did not, in fact, return to service until January 23, 1969.

On February 5, 1969, the union filed claim in behalf of Mr. McKnight and this claim has been handled in the usual manner prior to receipt by the Board. Copies of all correspondence are attached. (See Company's Exhibits D, E, F, G, H, and I.)

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose as result of Claimant being held out of service pending approval of Carrier's Chief Medical Officer.

The record shows that Claimant had been on leave of absence for some four and one-half months for health reasons. On December 15, 1968, he reported for duty with a release to return to work signed by Dr. C. W. Parrott, of the Illinois Central Hospital Department. He was told he would have to undergo a special physical examination before returning to work. The special examination was conducted by Local Surgeon Shelton on December 17, 1968, at which time, according to the Petitioner, Dr. Shelton turned Claimant down for employment, with advice that he was ordering him to Chicago for further examination. Claimant was examined at Chicago and discharged from Illinois Central Hospital on January 4, 1969. On January 14, 1969, the Chief Medical Officer advised the Superintendent that Claimant was physically qualified to return to work. Claimant was so advised on January 16, 1969, but did not return to service until January 23, 1969.

Based on the record, we find no violation of the Agreement in Carrier requiring Claimant to be examined by its Chief Medical Officer at Chicago. However, such action should have been taken with reasonable speed. There is no explanation for the delay from December 17, 1968, to January 2, 1969, in arranging for the examination at Chicago, nor is there any explanation for the delay from January 4, 1969, the date Claimant was released from the hospital at Chicago, until January 14, 1969, in notifying the Superintendent

that he was qualified. The Carrier's actions in this respect were dilatory. Any loss of time, however, from January 16, 1969 to January 23, 1969, was of Claimant's volition.

Ten days should have been sufficient time for Carrier to have completed the necessary examinations. Claimant was out of service twenty-five days. We will award him pay for fifteen days — at straight-time rate.

There is nothing in the record to substantiate the claim for \$73.00 expenses, and that portion of the claim will be denied.

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 to the extent shown in Opinion.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1971.