

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19535  
Docket Number MSX-19465

William M. Edgett, Referee

(William T. Wleklinski

PARTIES TO DISPUTE: (

(REA Express, Inc.

STATEMENT OF CLAIM: This is to serve notice as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on July 23rd, 1971 covering an unadjusted dispute between me and R.E.A. Express, involving the question, should I have suffered the loss of 31 days with out pay?

I believe R.E.A. owes me 31 days pay.

No oral hearing is necessary.

On the morning of April 16th, 1971, after I had finished my work, I was told to go and take an I.C.C. physical at the Allport Medical Center. While I was under going this examination, the doctor found that I had a perforation in the right ear drum, he immediately started to give me the whisper test, as they did when I took my pre-induction test for the army in 1942. After I was tested on a machine, which by the way was not in a sound proof room. After the test I was led into a consultation room, where I was confronted by a doctor Baker, he said I could no longer work my trade as a truck driver, he said told me that I would have to purchase two hearing aids, before going back to work. Dispatcher Mr. Fred Allen called my home about an hour later, and also said that I should not report for work that night.

On May 25th, 1971 I received a telephone call from the Allport Medical Center to come in the next day and that they would give me a release to go back to work. I wish someone would explain the sudden change. I went back to work for R.E.A. Express on May 31st 1971, but there is no explanation or reason given for being out of work for 31 days. I would like to quote rule #55 in the R.E.A. manual of general rules and instructions (Over the Road Drivers are required to be reexamined every three years, by a licensed doctor of medicine or osteopathy. I am not an over the road driver, I did not bid for any bulletined position for over the road work, I did not get any hearing aids. The perforated ear drum? I had that when I came to work for R.E.A. in February of 1960.

OPINION OF BOARD: Claimant is seeking reimbursement for wages he lost when he was held out of service after Carrier's physician refused to certify him for duty following a physical examination on April 16, 1971. Claimant went to the Illinois Eye and Ear Infirmary Clinic for a further hearing examination. On May 26, 1971, Carrier's physician, after a telephone conference with the Clinic issued a certification, which was apparently based on the report given to him by the Clinic. Carrier immediately restored him to service.

On June 22, 1971 Claimant filed notice with the Board of his intention to file an ex parte submission. He requested an oral hearing before the Board. In his submissions and in his oral presentation Claimant argued that he was held out of service in violation of the Agreement between REA and the Brotherhood of Railway and Steamship Clerks. The record shows that he did not file a claim, as provided by Rule 11 of that Agreement, but instead filed a submission directly to this Board.

At the hearing Claimant ably presented his case. He advised the Board that he had refused, for a period of time, to release the results of his examination at the Clinic to Allport Medical Center. The Center, after further examination of Claimant, rescinded its earlier certification, which was based on the Clinic's examination, and Carrier thereupon removed him from service again. During that period, he advised the Board, he received benefits, including Supplemental Unemployment Benefits under Rule 13 of the Agreement. Finally, he released the report of the Clinic to the Allport Medical Center. At the hearing Claimant advised the Board that his representative then arranged with Carrier for an independent medical examination. He was restored to service following that examination and now claims a period of 56 days lost wages.

The Board's jurisdiction is derived from the Railway Labor Act which requires that disputes to be adjudicated by it must first be handled on the property. The record here clearly shows that this claim was not placed before Carrier on the property. In Award No. 18350 (Dorsey) the Board considered a similar situation and said:

"The record is clear that the claim the Petitioner is attempting to assert before the Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The claim is, therefore, barred from consideration by the Division and will be dismissed."

This claim must be dismissed for the reasons expressed above.

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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 Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. H. Kellum  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.