

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that C. C. Patterson, Painter, Aurora Division, be paid the difference between what he received as a B. & B. laborer at 43 cents an hour and what he would have received had he been paid at painter's rate of 67 cents an hour on May 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30 and 31, and June 1, 3 and 4, 1940.

EMPLOYEES' STATEMENT OF FACTS: While employed as a Bridge and Building helper on March 16, 1940, under the supervision of Foreman I. T. Towers, C. C. Patterson sustained an injury to his right knee while assisting his foreman saw off a piling with a crosscut saw. Mr. Patterson continued to work as a Bridge and Building helper in Foreman I. T. Powers' gang until April 22, 1940, when he was reduced to a Bridge and Building laborer on account of force reduction.

On April 27, 1940, bulletins were posted advertising vacancies for positions of painters and painter helpers on the Eastern District. Since Mr. Patterson had a seniority date as painter from June 24, 1929, he bid on, and was awarded a position as painter in the Steel Bridge Paint Gang which was to begin work at Metropolis, Illinois on May 13, 1940. He was not permitted to accept the assignment however, as he was still under the care of Dr. Murphy at Aurora, Illinois, who was treating his injured knee.

Due to the fact that Mr. Patterson was not permitted to accept the assignment of painter in the Steel Tank Paint Gangs at Metropolis, Illinois, a temporary vacancy existed. This temporary vacancy was filled by Mr. Oliver Herold, formerly employed as a helper in Foreman Winders' Bridge and Building Gang on the Aurora Division. The temporary assignment of Oliver Herold as painter in the Steel Tank Paint Gang at Metropolis, Illinois, created a temporary vacancy as helper in Foreman Winders' gang on the Aurora Division, and Master Carpenter W. G. Ascott, of the Aurora Division, asked Mr. C. C. Patterson to fill the temporary vacancy. Mr. Patterson declined to fill the temporary vacancy as helper in Foreman Winders' gang due to the fact that his seniority permitted him to be employed as a painter at the time he was required to work as a bridge and building laborer.

During the period May 13 to June 8, 1940, while Mr. Patterson was required to work as a laborer, he was assigned to work of stenciling shop buildings on June 5, 6, 7 and 8, 1940, for which he was paid painter's rate of pay.

The citations of precedent herein presented, leave no course of action open, other than a determination that this claim involves no dispute or grievance within the meaning of Section 3 of the Railway Labor Act; and that it is therefore entirely outside of the jurisdiction of the National Railroad Adjustment Board.

OPINION OF BOARD: On May 13, 1940, claimant was awarded position as painter, working on the Ohio River Bridge at Metropolis, Illinois. Two days later, a physician advised claimant's employing officer that claimant was not a safe employe for painting work on that bridge until he had recovered sufficiently from an injury received on March 16, 1940, which was diagnosed as synovitis of the right knee. The physician advised that he be permitted to remain at work in Aurora as there was no objection to his working on the ground or with only a minimum amount of climbing. Acting on this advice, the Carrier did not permit him to paint the bridge.

The record fails to show the advice given by the physician was given in bad faith. The Carrier is entitled to hold an employe out of service on the bona fide advice of a physician that he considers the employe unsafe for service. (See Award No. 728.)

Under the circumstances involved in this claim, the Board holds there was no violation of the agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.