

Award No. 4892  
Docket No. MW-4885

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Edward F. Carter, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
GULF, MOBILE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier has improperly held out of service Section Laborer Georgia Fennell, Canal Street Yards, New Orleans, Louisiana, since September 30, 1948.

(2) That Section Laborer Georgia Fennell be returned to the Carrier's service with all rights unimpaired and paid for all wages lost since September 30, 1948 until the date she is returned to service; because other employes were performing the work she regularly performed prior to August 4, 1948.

**EMPLOYES' STATEMENT OF FACTS:** On November 9, 1943 Georgia Fennell was employed as a Section Laborer, Canal Yards, New Orleans, Louisiana. She was assigned to and performed the regular duties of a Section Laborer until November 25, 1946 at which time she was assigned to tending switch lamps, oiling switch points and frogs and cleaning up in Canal Yards. She continued to perform these duties until December 10, 1947 when she contacted pneumonia and was sick until March 30, 1948. On April 5, 1948 her personal physician, Dr. Frederick Rhodes, New Orleans, Louisiana, who had treated her during her illness, informed her that she was physically qualified to resume her former duties.

She reported for work and the Section Foreman sent her to Dr. D. D. Baker, the Carrier's physician, who disqualified her for work as Section Laborer account hypertension. She was then sent to the Missouri Pacific Hospital in St. Louis, Missouri, and on May 29, 1948 the Carrier was informed that she was physically able to resume work in the capacity in which employed before being ill.

She resumed her former duties on June 2, 1948 and continued to perform them until approximately July 22, 1948, when she was informed that the light work to which she had been assigned had ceased to exist and that henceforth she would be assigned to work with the regular crew in Canal Yards.

After Georgia Fennell was assigned to work with the regular crew the work that she had previously been assigned to perform was done by entire crew on Tuesdays and Saturdays of each week.

While working with the regular crew on August 4, 1948, she was injured but after treatment she was informed September 29, 1948 by Doctors Phillips,

but before 9:20 a.m. the same morning she asked the foreman to have one of the other members of the section gang take her home, that she was unable to work. This was done.

The Claimant again went to the Missouri Pacific Hospital in St. Louis and was a patient there from June 29 to July 10, 1949, and upon her discharge from the hospital was again disqualified to work as a section laborer. To this time Claimant has not been qualified by either the local doctors of the Missouri Pacific Hospital Association in New Orleans or by the hospital in St. Louis.

In the Employes' Position they say, in connection with Claimant's stay in the Missouri Pacific Hospital from November 8 to November 13, 1948: "After her examination at the hospital she was told that she was able to resume light work, but was told to report back to the doctor at New Orleans and he would discharge her . . . ." Claimant was not "discharged" by the local doctor in New Orleans. In a letter dated November 30, 1948, from the two doctors at the Hospital, addressed to General Chairman Plunk, they very definitely state: "But it is our opinion that Mrs. Fennell cannot do the heavy arduous duties required of a section laborer as a result of her hypertension and arthritis". A complete copy of this letter appears in Carrier's Statement of Facts.

The Employes have contended that the Claimant should be employed as a section laborer but assigned only to do the very light work such as cleaning lamps and oiling switches. The parties to the applicable agreement never contemplated, nor does the agreement provide, for the separation or segregation of the work of a section laborer. The so-called "light work" is performed by the entire section gang at New Orleans at various times, usually on one day of the week, but for safety precautions no one person is assigned to the so-called "light work" each day.

Without waiving this position, we wish to point out that the Claimant in this case, upon returning to work, was given the very light work of cutting weeds and in less than one hour the Claimant requested to be taken home, being unable to perform the work, and has not since requested to return to work.

To sustain the instant claim, which would have the effect of putting the Claimant back to work as a section laborer, would have the result of lowering Carrier's physical requirements. We must insist that this not be done. In its operation, the physical requirements applicable to employees is a vital factor in a safe and efficient operation and to have employees working in the capacity of a section laborer who are not physically qualified would unduly jeopardize lives of others as well as property.

The Carrier respectfully requests that this claim be declined.

(Exhibits not reproduced).

**OPINION OF BOARD:** The claimant, Georgia Fennell, was employed as a section laborer in the Canal Yards, New Orleans, Louisiana, on November 9, 1943. About November 25, 1946, claimant was given the work of tending switch lamps, oiling switch points and frogs, and doing such other light work such as cleaning up debris in the yards. On December 18, 1947, she became ill and did not report back for work until April 5, 1948, at which time she was sent to Dr. D. D. Baker, a physician of the Missouri Pacific Hospital Association, for the examination required before she could resume work. Dr. Baker disqualified her because of a hypertension. On April 19, 1948, Dr. Frederick Rhodes, her personal physician, reported that claimant had been physically able to work since April 5, 1948. On May 11, 1948, the Carrier made inquiry of the Hospital Association if claimant was physically qualified to do the work of a section laborer. After a further examination, the Hospital Association found that she "is able at this time to resume her occupation of

switch cleaner and lamp lighter." On June 1, 1948, she resumed her position as a section laborer. On June 8, 1948, the Carrier again inquired of the Hospital Association if claimant was physically qualified to perform the duties of a section laborer. The Hospital Association answered that she could perform such work. On August 4, 1948, she sprained her back while cutting weeds and she was again sent to Dr. Baker. On September 30, 1948, she reported for work with a statement signed by Dr. Lyons, a personal physician, to the effect that she could return to light work. She was not permitted to resume her work as a section laborer. On October 5, 1948, Dr. Baker dis-qualified claimant for heavy work but stated she could do light work. On November 30, 1948, the Hospital Association reported that Mrs. Fennell could not perform the work of a section laborer. On January 6, 1949, claimant was examined by Dr. Tessitore at the request of the General Chairman. His report was that she was able to do light work such as cleaning switches, cleaning lamps, lighting switch lamps, etc.

It is the contention of the claimant that she is able to do light work and having been permitted to do the work of tending switch lamps, oiling switch points and frogs and cleaning up the yards, that she has a right to continue to perform it. The Carrier contends that there are no classified positions among section laborers and that each employe in this class must be able to perform all the duties of a section laborer. The position of the Carrier is the correct one. The fact that claimant was given light work to do for a period of time, whether because of age, illness or sex, does not change the rule. When the work of the section gang was so allocated that she could no longer be accommodated, she cannot complain of the disqualification if she cannot perform all the duties of a section laborer. An accommodation of an employe because of age, illness or sex, does not ripen into a right where the accommodation was granted to avoid disqualification for physical disability. We are obliged to say that a section laborer who is unable to perform all the duties of such because of physical disability is subject to disqualification.

**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 Employes 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 agreement was not violated.

#### AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1950.