

Award No. 5908
Docket No. TE-5776

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on The Pennsylvania Railroad that Agent S. L. McCracken, Hollidaysburg, Pa., was improperly held off duty by the carrier since September 3, 1943; and

That he shall be restored to his regular position and compensated for all losses in earnings since this violation of the agreement occurred. Article VI, Section 1(a), Part 1.

EMPLOYEES' STATEMENT OF FACTS: Mr. S. L. McCracken, first became an Agent and holds a seniority standing on the Agents' roster as of January 30, 1918, on the Middle Division, Pennsylvania Railroad.

Mr. McCracken first became Agent at Hollidaysburg, Pa., on May 1, 1937, remaining there until September 3, 1943, when arbitrarily removed.

Mr. McCracken's service as Agent was satisfactory to the point that he held such a classified position for approximately 25 years, or until 8 A. M. September 3, 1943, when he was arbitrarily removed from his regularly assigned position as Agent at Hollidaysburg, Pennsylvania.

It was not until after Mr. McCracken's removal from his regularly assigned position as Agent at Hollidaysburg, Pa., that the Carrier first advanced the theory of his being removed from his job because of physical disability.

As Medical Authority for Mr. McCracken's removal from his Agency position at 8 A. M. September 3, 1943, there was none. Neither through the Pennsylvania Railroad Voluntary Relief Department, nor any Doctor, or otherwise, had the carrier or any of its departments or officials previously requested an examination of Mr. McCracken, or secured the services or advice of medical authority of, or concerning Mr. McCracken.

Agents on the Pennsylvania Railroad are not required to take a periodical physical examination, unless their duties involve the handling of train movements, have charge of a yard as Yard Master, or have jurisdiction of trainmen at their location.

The Agent at Hollidaysburg, Pa., is not charged with such jurisdictional duties.

physical condition. The Carrier has offered substantial evidence of probative value in this respect. Moreover, the Carrier has shown that it has not acted in an arbitrary or capricious manner in its handling of the Claimant, but to the contrary, has been exceedingly fair and just in the treatment extended him.

It is, therefore, respectfully submitted that the Claimant was properly held out of service in the period involved on the recommendation of proper medical authority, and that an employe so held out of service is not entitled to any compensation under the provisions of the applicable Agreements.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the Claimant was properly held out of service upon the advice of competent medical authority; that under such circumstances no violation of the applicable Agreements has occurred; and that Claimant is not entitled to alleged loss of earnings.

It is, therefore, respectfully submitted that the claim is without foundation under the applicable Agreement and should be denied.

All data contained herein have been presented to the employe involved or his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is claim that an employe was improperly held off duty since September 3, 1943.

The record discloses that prior to September 3, 1943, the Claimant had evidenced difficulty in properly fulfilling the duties and responsibilities of his assignment.

On September 3, 1943, the Claimant was examined by the Carrier's medical examiner, who diagnosed the case as nervous exhaustion and recommended a 30-day rest. From September 3, 1943, until the date of the claim, the Claimant has been held off duty for alleged physical disability.

The Claimant was examined by a specialist, Dr. Goshorn, Superintendent of the Hollidaysburg State Hospital. The report of Dr. Goshorn stated that he was of the opinion that the Claimant was mentally ill and recommended further examination.

Dr. Kell examined the Claimant and it was his opinion that the Claimant was mentally ill and in no condition to return to work.

Claim was docketed under date of March 26, 1945. This was denied by the Division Superintendent.

The claim was also denied by the General Superintendent on November 7, 1945.

On December 20, 1945, the claim was discussed with the General Manager, who proposed the appointment of a board of doctors to determine the Claimant's condition. The General Chairman chose to hold the claim in abeyance so that he could make a further investigation.

Some correspondence, regarding the claim, was exchanged between the General Chairman and the General Manager between December 20, 1945, and October 21, 1948. During that period two dates were set for the Claimant to be examined. The Claimant failed to appear for either examination.

Finally, on October 21, 1948, the General Chairman, Claimant and Claimant's Attorney met with a representative of the General Manager and it was pointed out that Claimant's return to duty was contingent upon approval by the Medical Department. At this meeting the Claimant agreed to be examined by Dr. Kell, a specialist. Claimant stated that he had complete confidence in Dr. Kell and that he was willing to abide by Dr. Kell's diagnosis and decision. The written report by Dr. Kell was not favorable to the Claimant, in that it stated that risk would be involved in returning the Claimant to duty. The Carrier denied the claim to return the Claimant to duty.

The Claimant was examined by a doctor of his own choosing on August 4, 1948, and by another doctor of his choice December 30, 1948. It is not shown that either of these doctors were specialists in the mental field.

We are faced with the question of whether this Claimant has been improperly held off duty since September 3, 1943. We find that he was not improperly held off.

The facts of record indicate that the Carrier has not violated the terms of the Agreement. That the actions taken by the Carrier were based upon the recommendations of competent doctors. The Carrier, under such circumstances, was not only acting within the bounds of their discretionary powers, but was under a moral obligation to the public, other employees, and to the Claimant to take the action that was taken.

The Carrier offered to submit the Claimant's case to a board of doctors to determine his physical condition. This was rejected by the Claimant. The Carrier has accorded an examination every time the Claimant indicated his desire to return to work.

Under the terms of the Agreement of September 1, 1949, Rule 8-E-1, the Claimant is entitled to be examined by a board of doctors comprised of a doctor selected by the General Chairman, a doctor selected by the Management and a third doctor selected by the first two doctors.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.