

Award No. 6237

Docket No. CL-6201

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) That the Carrier acted arbitrarily and in violation of the Agreement when it declined to entertain the request of Solomon C. Trammell for a formal investigation and/or hearing for the purpose of giving consideration to his grievances, and, further;

(b) That the Carrier acted arbitrarily and in contravention of the Agreement when it declined to permit said Solomon C. Trammell to work on his regular assigned work days during the period May 19, 1950, to June 28, 1950, both dates inclusive, and, further;

(c) That Solomon C. Trammell be paid for each work day occurring during the period stated in paragraph (b) above at the rate of pay attaching to the position to which he had previously been assigned in accordance with his seniority rights.

EMPLOYEES' STATEMENT OF FACTS: Solomon C. Trammell, holding the position of Mail and Baggage Handler, assigned to him effective May 3, 1950 by Mail and Baggage Department Bulletin No. (MBH) A-710, having Wednesday and Thursday as rest days, with assigned hours 12:00 midnight to 8:30 A.M. and a rate of pay of \$1.44¼ per hour, did not work Sunday, Monday and Tuesday, May 14, 15 and 16, 1950 because he was ill. Wednesday and Thursday, May 17th and 18th were his regular assigned rest days. He reported for work at midnight (12:01 A.M.) Friday, May 19, 1950 and was told by the Foreman in charge of his shift that he would not be allowed to work until he had seen the Mail and Baggage Agent. On Saturday, May 20th, he reported to Mr. J. P. Wolfe, Mail and Baggage Agent, who sent him to the office of the Terminal Company Chief Surgeon, Doctor R. D. Irland, where he was examined by a Doctor Willoughby. Mr. Trammell had presented to Doctor Willoughby a letter dated May 17, 1950, signed by his

June 2nd and on the basis of a plea of hardship, Superintendent Voorhees ordered an examination by three specialists to develop the facts surrounding his condition and to be able to judge the Employees' contention that Trammell was capable of performing the duties of his assignment. He ordered this done at company expense. On the basis of their findings, and the statement of two of them, that he was without pain and could return to duty, Carrier's Exhibits "D", "E" and "F", the Company Doctor returned him to service on June 28th. The Carrier denies that they acted arbitrarily or in violation of any rule of the agreement in the above case and requests that your Honorable Board so hold.

All of the above has been handled either in conference or correspondence with the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, a mail and baggage handler, seeks pay for time held out of service.

On account of illness, claimant did not work for the three days immediately prior to his rest days. When he reported for work on Friday, May 19, 1950, following the rest days, he was referred to the company physician, to whom he submitted a letter from his personal physician, Dr. Pierron, dated May 17, advising that claimant "had a recurrence of pain in his right arm due to the condition reported previously. Light work would allow his condition to improve." He was not permitted to work as not recovered sufficiently to perform his duties. On May 24, he submitted another letter from his physician, of that date, which reads:

"Mr. Solomon Trammell has had an exacerbation of pain from the bony deposits scattered throughout his body. He has been especially troubled by the one in his left shoulder.

"The exact etiology of these bony formations are unknown despite biopsy and examination by Dr. Eard Summerville.

"There is also a distinct psychic element in this case."

After receipt of said letter, Carrier still kept him out of service and thereafter, on May 27, claimant's representative requested a formal hearing in his behalf and statement of the reason for his dismissal from the service. After conference this request was denied on June 7. On June 14 appeal was made to the Superintendent and a week later claimant was ordered to report for examination by Company specialists. He was examined by them on June 23 and 24 and restored to service on June 28 on the basis of their reports.

In view of Claimant's prior record of illness and of the absence of any explanation of the "conditions reported previously" as stated in Dr. Pierron's letter of May 17, and of the undisputed showing that Claimant's assigned position frequently required heavy lifting, we think Carrier was fully justified in holding Claimant out of service until showing of further recovery. Claimant relied on the statement of his own physician and it justified denying, rather than granting, return to service.

Again on May 24, Claimant presented the second letter of his physician as basis for return to work. That letter emphasizes Claimant's pain especially in his shoulder, which he would necessarily use in lifting, but says nothing whatever regarding his recovery or ability to do the work required by his assignment. Restoration to service upon such notice of disability would have been at risk of serious consequences both to Claimant and Carrier and Carrier could properly deny it.

But on May 27, Claimant, by his request for hearing, independent of his physician, in effect asked Carrier to determine his fitness to return to work. Whether his claim came under the Grievance Rule as an employee who con-

sidered himself unjustly treated, we need not determine. If it applied, he complied with its requirements. If not, in any event he was entitled either to return to service or to prompt examination by Carrier's physicians to establish his inability.

However, Carrier delayed from May 27 to June 28 in such examination and restoration to work, and for the period of such unnecessary delay: to wit, from and after June 1, Claimant should be paid.

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 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

Carrier violated Agreement as hereinabove noted.

AWARD

Claim sustained for payment from and after June 1, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.