

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**J. Glenn Donaldson, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE PENNSYLVANIA RAILROAD COMPANY**

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

Elizabeth Lawrence, Trucker, South Philadelphia Freight Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division, be returned to duty with all rights unimpaired and be reimbursed for all monetary loss sustained beginning October 21, 1948, and until adjusted. (Docket E-796)

**OPINION OF BOARD:** The parties jointly agree that Claimant, Elizabeth Lawrence, was notified "Effective 5:00 P.M., June 4, 1948, you will be relieved from Trucker position, located at South Philadelphia Freight Station, (a) position abolished 5:00 P.M., June 4, 1948. You may, therefore, exercise seniority in accordance with Regulation 3-C-1."

R.D. was issued by the Agent at South Philadelphia Freight Station, on July 5, 1948, reading: "Position abolished 6-4-48. Failed to exercise seniority or request furlough. Dropped from service 7-15-48, Regulation 3-C-1 (a)."

Rule 3-C-1, mentioned above, reads in its pertinent parts, as follows:

"An employe displaced from his regular position shall exercise seniority within twenty-nine days or forfeit all seniority, except as provided in Rules 2-A-7 and 3-C-1, or in cases of personal illness, unavoidable causes or inability to exercise seniority due to the fact that no position is available. In case of absence due to personal illness or unavoidable causes, the twenty-nine day period will be extended proportionately to the extent of such absence. \* \* \*"

The parties are in agreement that under the latter portion of the quoted rule in case of temporary disability, personal illness (injuries), the twenty-nine day period will be extended. The factual issue presented for our decision is whether or not Claimant's physical condition, following an accident occurring on May 7, 1948, was disabling so as to bring her under the exception contained in the rule.

The Carrier could not have forced a genuinely sick or disabled person to resume the arduous work of a Trucker against his or her will. Neither

could it take effective steps to extinguish such employee's seniority rights as protection is afforded to employee under the exception contained in the applicable rule. On the other hand, the burden rests upon the employee, eventually, to prove the disabling nature of the injuries or illness if the employee believes that the Carrier's action under Rule 3-C-1 was unwarranted. This Claimant seeks to discharge that burden by the production of two letters under different dates given by her personal physician plus an R.D. 26 (return to duty card) issued by a Company doctor on October 20, 1948. The Organization ascribes to such R.D. card a meaning far beyond its true import when they argue, "The issuance of an R.D. 26 (return to duty card) further designates that in the eyes of the Medical Examiner, Elizabeth Lawrence was in no position to assume the duties of her position prior to October 20, 1948." There can be no such assumption. Carrier's medical staff on three prior occasions, within three weeks of the date of the accident, found her injuries non-disabling. And there is nothing to show that the findings would have been any different if examination for the R.D. card had been requested at any time prior to October 20, 1948. The examination for R.D. card could not act to restore employment status provided it was regularly terminated. The case subject of Award No. 6652, cited by the Organization, differs factually from the instant case. There employment status existed and the controversy was over Claimant's ability to handle a particular job. The matter was remanded by the Board without decision.

The Carrier's medical doctors made three examinations and arrived at specific findings which reports could have been made available to Claimant or her representatives. To successfully carry her burden of proof, Claimant would have had to produce competent medical testimony sufficient to overcome, to the satisfaction of this Board, the prima facie case of non-disability made by the Carrier. Claimant's medical attendant made no such effort. His two general, non-descriptive letters are of slight value as evidence as a reading will readily reflect. If Claimant had in fact suffered from a fractured vertebra, for example, Carrier's findings could have been swept away by an X-ray demonstrating that fact, interpreted by a medical man whose competency had been proven by easily available means. If a herniated disc had been suffered in the accident of May 7, X-rays, milograms or discograms, competently interpreted, would have been most convincing and would have given grounds for the sustaining of this claim.

Because one examining Carrier doctor expressed an opinion that Claimant was malingering, the Organization argues that a disciplinary hearing should have been held rather than the procedure adopted. Award 2904 is cited in support of this contention. There is nothing in the record indicating that the Carrier adopted the opinion of one of its examining physicians. It proceeded at all times under the procedures made available to it by Rule 3-C-1 and we find no similar rule mentioned in the cited Award. That Award also indicates that the basis of discharge there relied upon in denying the claim was of "misstatements in regard to a material fact concerning which the Carrier had the right to demand the truth", an issue not raised in the instant case.

Claimant, we are compelled to find, has failed to sustain the burden of proof of disabling illness or injury so as to extend the period specified in Rule 3-C-1 for exercising seniority and the termination of the same was fully effective.

**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

That Claimant's burden of proof was not sustained and her employment and seniority were terminated in line with Rule 3-C-1.

**AWARD**

Claim denied.

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

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

Dated at Chicago, Illinois, this 25th day of June, 1954.