Award No. 6753
Docket No. CL-6723

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

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

Howard F. Brown, Clerk, 8 Broadway, New York City, New York Division, be returned to duty with all rights unimpaired and be compensated for all monetary loss sustained from ninety days prior to September 5, 1951, until adjusted. (Docket N-326).

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position, and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employes, between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act and which has also been filed with the National Railroad Adjustment Board.

This dispute was progressed to the highest operating officers of the Carrier by means of a Joint Submission. This Joint Submission is attached as Employes' Exhibit "A" and will be considered as a part of this Statement of Facts.

The Claimant, Howard F. Brown, has seniority rights on the New York Division of the Pennsylvania Railroad Company, and held a regularly assigned clerical position, Symbol F-3382 at the Lighterage Agency, 8 Broadway, New York City, New York, on February 3, 1951.

On February 4, 1951, Claimant Brown was hospitalized at the New Jersey State Hospital at Marlboro, New Jersey.

On April 17, 1951, the Claimant was released from the New Jersey State Hospital, Marlboro, New Jersey, and on April 27, 1951, presented himself at the office of the Medical Examiner, Pennsylvania Station, New York City,

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 of 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 Employes 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 Agreement 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 representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a case involving the mental status of an employe and his right to require the Carrier to return him to work after confinement in, and discharge from, one of the New Jersey State Mental Hospitals.

No rule of this jurisdiction is more firmly established than the one that a Carrier is possessed with certain discretionary powers in determining the fitness of an employe for service and that its exercise of those powers in respect to such matters will not be disturbed in the absence of a clear affirmative showing they have been exercised in an unreasonable, arbitrary or capricious manner.

The rule prevails, and is universally applied, with respect to Carrier determination of both physical (see Awards Nos. 5815 and 6652) and mental (see Awards Nos. 4816 and 5908) unfitness for service. This is so not only because management has the right to protect its own property but because it is charged with certain responsibilities where injury results from negligent or unwarranted conduct on the part of its selected employes. Actually, although seldom applied because of its lack of frequency, there is as much, if not more, reason for application of the foregoing principle in cases of mental unfitness than there is in situations where physical disability is involved for while the latter may be a handicap and subjects the unfortunate employe to physical limitations the former is something over which he has no control whatsoever, either physical or mental. Thus appears the sound and basic reason for the rare instances in which this Division of the Board has seen fit to set aside the action of a Carrier in refusing to put an employe back to work when such action is upon the ground of mental unfitness.

In the instant case it is conceded, that on February 2, 1951, following a psychopathic incident in a grocery store after his tour of duty, Claimant was taken into custody and was thereafter confined in the New Jersey State Mental Hospital at Marlboro where a diagnosis was established of Dementia Praecox, Catatonic Type; that he was confined in that institution until April 17, 1951, when he was released on trial or probation subject to periodic examinations; and that he was ultimately given a complete discharge from the hospital's jurisdiction on February 15, 1952.

The record contains other concrete evidence of probative value of divers acts and unusual conduct indicative of mental instability on the part of this unfortunate employe who, through no fault of his own, finds himself the victim of Dementia Praecox defined in Webster's Collegiate Dictionary (Fifth Edition) as "a form of insanity, developing usually in late adolescence, and characterized by loss of interest in people and things and incoherence of thought and action."

Nothing would be gained by encumbering our reports with the extensive details of Claimant's efforts to return to work. Besides they are set forth in a joint submission of facts which is a part of the record. It may be said, however, that his personal attempts commenced shortly after being released from the hospital on probation and continued until around February 21, 1952, when the Carrier proposed a joint check by medical authorities to determine his condition and to finally dispose of the case, which he, as well as his organization, declined with the result the latter took over and progressed a claim on the property and the instant claim to this Division of the Board.

Touching evidence before the Carrier at the time it declined to put Claimant back to work it is true, as the latter suggests, that he had a discharge from the mental institution in which he had been confined, a letter from the Medical Director, and a written communication from the Railroad Retirement Board refusing further sick benefits because that body had determined he was able to work within the meaning of the Unemployment Insurance Act. It is likewise true that he had reports from several recognized psychiatrists of his own choosing indicating his mental condition had improved and that all of such statements, including one from the hospital and from the Retirement Board, indicated in a general way that his condition was such that he was making a satisfactory adjustment and could engage in remunerative employment. However, we note that none of such statements went so far as to expressly state that his condition was such his former employer should put him back to work on the position he had been occupying on the date of the incident resulting in his confinement in the State Hospital. On the other hand Carrier had before it a number of reports from its own psychiatrist who, we pause to note had examined Claimant for that very purpose at intermittent intervals, definitely stating that on the dates of the examinations made by him he was satisfied that Claimant's mental condition had not sufficiently improved to permit a medical conclusion that Claimant was mentally fit to return to his old position. Moreover, as previously indicated, the record discloses that following disagreement with this psychiatrist's last declination to certify Claimant as fit to return to service, and his disagreement therewith, Carrier offered to submit final decision of the question in controversy to a neutral Medical Commission, one member to be chosen by Claimant, one by Carrier, and the third to be selected by the two medical authorities certified by the parties.

Under the foregoing conditions and circumstances, and others touched upon in this opinion, we do not believe it can be justly said, or held, the Carrier's action in refusing to put Claimant back to work on the ground his mental condition was such as to still render him unfit to perform the duties of the position he was occupying on the date of the incident resulting in his confinement in the heretofore mentioned mental institution under diagnosis of Dementia Praecox, Catatonic Type, was either unreasonable, arbitrary or capricious. The result, under Awards to which we adhere, is

that Claimant has failed to establish grounds for allowance of his claim and it must be denied.

In reaching the conclusion just announced we have rejected, not overlooked, contentions advanced by Claimant to the effect the Rules Agreement in force and effect between the parties required Carrier to put Claimant back to work regardless of its views respecting his mental fitness to return to service and then institute disciplinary action to establish its position on that point. Much could be said on the subject but it sufficies to say that under the confronting facts and circumstances we do not think any rule of the Agreement relied on warrants or permits any such construction.

Finally it should be stated that in line with the previous policy of this Division of the Board we are not inclined to here foreclose or delay Claimant's right to be heard on the question whether his mental condition is now such that he is entitled to be returned to his position as fit for service. We suggest that if requested this should be determined by a Board of qualified physicians in accord with Carrier's previous offer. All we here hold is that Claimant has not been improperly held off duty from February 21, 1951, to the effective date of this Award.

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 Employes 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 in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1954.