

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees—

(1) That the Carrier violated the Rules Agreement between the parties, effective September 1, 1952, when on April 26, 1954, it required Emile J. Bechard, employed as Store Helper, Billerica Stores, Mass., to submit to a physical examination by its Company physician and as a result thereof summarily suspended Mr. Bechard from the service at 3:40 P. M., on May 12, 1954, and have steadfastly declined to recognize the validity of his continuing claim, for all wage loss sustained, retroactive to May 13, 1954, by acknowledgement thereof; and

(2) That the Carrier shall forthwith reinstate Mr. Bechard to employment in his position of Store Helper from which he was suspended on May 12, 1954, and reimburse him for all wage loss sustained for each and every day he is withheld from his position at the rate of \$13.768 per day, retroactive to May 13, 1954, and continuing so long as the alleged violation exists.

EMPLOYEES' STATEMENT OF FACTS: Emile J. Bechard, employed as a Store Helper at Billerica Stores, (Service Date 7-26-1926, Seniority Date 6-17-1941) rate of pay \$13.768 per day, Monday to Friday, inclusive, became ill in October, 1953, and upon advice and consent of his personal physician returned to the service of the Carrier on April 23, 1954, and worked on his position of Store Helper that day. At 3:00 P. M. on that date (April 23, 1954) Mr. W. H. Merritt, General Foreman, told Mr. Bechard that he would have to submit to a physical examination by the Company's Chief Surgeon, Dr. Knowles. Mr. Bechard reported to Dr. Knowles' Office on April 26, 1954; was examined by him and reported back to work on his position on April 27, 1954, where he continued to work until suspended by Mr. J. J. McKinnon, Storekeeper, at 3:40 P. M. on May 12, 1954.

On May 13, 1954, Mr. Bechard requested Storekeeper McKinnon to furnish him with a statement of the precise charge or charges in writing as to why he was suspended from the service. A hearing was held upon the

OPINION OF BOARD: This case is similar in all essential respects to Award No. 7484. For the reasons set forth in that Award, we make the following rulings in this case:

1. We do not decide whether or not there was a violation of the Rules Agreement between the parties.
2. We hold that there was a violation of the Agreement to set up a special medical board by the failure to appoint a third member thereto.
3. We deny the claim for compensation.
4. On the issue of reinstatement, we direct the parties to choose a medical board according to the procedure set forth in their Agreement of October 21, 1954, and to abide by the decision of that board.

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

1. That no question of violation of the Rules Agreement between the parties is before us.
2. That the Agreement of October 21, 1954, to establish a medical board was violated, as per Opinion.

AWARD

Claim disposed of per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1956.