Award No. 10598
Docket No. DC-10396

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 351 on the property of the Grand Trunk Western Railroad Company for and on behalf of H. C. Johnson, waiter, that he be compensated for all net wages lost, together with any and all other emoluments that may have accrued to him account Carrier's withdrawal claimant from service January 19, 1957, in violation of the effective agreement.

EMPLOYES' STATEMENT OF FACTS: On January 22, 1957, Carrier's Assistant Superintendent Dining Car Department wrote claimant that he was withdrawn from service because claimant's Kahn Test, with positive showing, was returned to Carrier's doctor who gave claimant a periodic medical examination on January 15, 1957 (Employes' Exhibit A). Immediately upon receipt of the letter and on January 28, 1957, claimant replied to Carrier's Assistant Superintendent Dining Car Department to the effect that in the past three years that the same Carrier's doctor, who examined him on January 15, 1957, had reported at least four or five times that claimant's Kahn Test was positive; each time a repeat test was taken immediately and the repeat test results were always negative; that claimant immediately requested a repeat test on the same day and was refused; that claimant then was given permission to talk to Carrier's Assistant Superintendent Dining and Parlor Car Department at Battle Creek, Michigan, and request another test. (Employes' Exhibit B). Carrier's Assistant Superintendent Dining and Parlor Car Department refused to authorize a repeat test and was advised by Carrier's Chief Surgeon that claimant should seek treatment from the Chicago City Health Department (Employes' Exhibit C).

On January 23, 1957, claimant went to the Chicago City Health Department office and had a test taken at that time. No evidence of venereal disease was found. The seroligic (Kahn) test for syphilis was negative. Claimant was given a certificate to this effect over the signature of the Venereal Disease Officer of the City of Chicago Health Department (Employes' Exhibit D).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a dining car waiter. The Rules Relating to Dining Car Service require employes of the Carrier to submit to periodic medical examination by the Carrier's physician. On January 15, 1957, the Claimant was examined by Dr. K. L. Matson who found him fit to continue to work. At the same time, the doctor drew some blood for a Kahn test and submitted it to the Illinois State Health Department for analysis. The laboratory report dated January 16, 1957, shows the Kahn test positive with a Titer of 8 units. Dr. Matson reported it to the Carrier's Chief Surgeon on January 18 and the Carrier's Assistant Superintendent of the Dining Car Service wrote to the Claimant on January 22, 1957, withdrawing him from service until he submitted evidence of treatment and cure. The letter of January 22, 1957, said in part:

> "I contacted our Chief Surgeon, Dr. B. W. Stockwell, at Detroit, who advised me it will now be necessary for you to get active treatment for your condition, at your own expense, from your own doctor or the City Health Department at Chicago, and after you get such active treatment, you are to obtain a certificate showing treatment given you and the results. After this, if you obtain a certificate showing your condition is negative, you are to report to our company's doctor at Chicago for a further examination to determine your fitness to return to work."

Following these instructions, Claimant went to the Chicago Board of Health on January 23, 1957, and submitted himself for examination for venereal disease. On January 31, 1957, the following report was issued:

"January 31, 1957

Re: Johnson, Harold
115 E. 57th Street
Chicago, Illinois

To Whom It May Concern:

> The above named person was first seen in this clinic on January 23, 1957. No evidence of venereal disease was found. The serologic test for syphilis was negative.

K. B. Muir, M.D.
Venereal Disease Control Officer"

A letter dated January 31, 1957, quoting the above report was addressed to Mr. R. K. Keith, Assistant Superintendent SD & PC Department, but the Record shows that it was postmarked at Chicago at 11:00 P. M., on February 4, 1957, and it was not received by Mr. Keith until February 6, 1957.

Pursuant to instructions, the Claimant reported to the Carrier's physician on February 7, 1957, for another physical examination. At that time blood was again drawn for another Kahn test and the Carrier's physician again sent the specimen to the Illinois State Board of Health for analysis. This laboratory reported on February 8, 1957, that the Kahn test was positive with a Titer of 3 units.

The Carrier's Ex Parte Submission says:

> "Because of the difference in medical reports, Carrier's Chief Surgeon, Dr. Stockwell, personally investigated the stiuation in Chicago on February 13, 1957. He talked with Dr. Forster who was in charge of the laboratory of the Illinois State Health Department at 1800 Fillmore Street, and he also talked with Dr. K. B. Muir, Venereal Control Officer of the Chicago Board of Health, who had issued the certificate to Mr. Johnson.
>
> "These individuals indicated that the two laboratories were using different tests. The Chicago Board of Health use a test called VDRL, and the Illinois State Laboratory use a blood Kahn test. There may be some variation between the two tests, but both Dr. Forster and Dr. Muir stated that it was unlikely that this degree of difference would appear."

In the meantime, the Claimant returned to the Chicago Board of Health on February 12, 1957, where he was examined by a consultant in Syphology. Blood samples were drawn for a TPI and a Wasserman test. The blood sample for the former test was sent to the United States Health Service in Georgia, the only laboratory where the TPI test is done. On February 26, 1957, Dr. Muir, Venereal Disease Control Officer, of the Chicago Board of Health reported to the Carrier's doctor that the blood Wasserman and the VDRL tests taken on February 12, 1957, were negative. The Claimant was returned to service on February 27, 1957.

On February 27, 1957, Dr. Muir sent the reports to Dr. Matson, the Carrier's physician. Two significant statements are contained in the letter of that date. One says:

> "It will interest me to know whether or not there is any discrepancy in the report on the specimen you submitted to the laboratory of the Board of Health and this one."

There is nothing in the Record reporting the results of the tests which the Carrier presumably submitted on the same date.

The other says:

> "It has been the experience of this office that the Kahn test is not so specific as the VDRL test, although it seems to be more sensitive."

There is no question that the Carrier had every right to rely on the report of January 16, 1957, and withdraw the Claimant from service until such time as the Claimant established his physical fitness to work as a waiter. The Claimant did, however, follow Carrier's instructions and submitted himself to the Chicago Board of Health for examination. The report showing the Claimant's fitness to return to work was received by the Carrier on February 6, 1957. The report from the Chicago Board of Health is dated January 31, 1957, but the letter to the Carrier is postmarked 11:00 P. M. February 4 and was received on February 6, 1957. Although the Carrier was entitled to have the Claimant re-examined, which was done

on February 7, it would have been more prudent and more equitable if the blood specimen taken on that day was again sent to the Chicago Board of Health or at least two specimens, one to the Chicago Board of Health and the other to the Illinois State Board of Health. While the Carrier has every right to choose the laboratory, it must do so at its own risk where there is clear and apparent conflict of reports.

There is no foundation in the Carrier's implication that there may have been a question "whether the Chicago Board of Health had taken a sample from some person other than the Claimant." In the absence of specific evidence of such an alleged fraud, the Carrier should have been more prudent in making such an allegation in its Ex Parte Submission. We do not believe that the Carrier acted with reasonable prudence after February 6, 1957.

Doctors Matson, Haley and Stockwell were agents of the Carrier. So was the Illinois State Health Department Laboratory. Claimant was examined at the Carrier's request. Any act of commission or omission by any of the Agents, no matter how well meaning and sincere, is the act of the Carrier.

The Carrier objects to the statement in this award that the Carrier could "have been more prudent and more equitable if the blood specimen taken on February 7" was again sent to the Chicago Board of Health or at least two specimens, one to the Chicago Board of Health and the other to the Illinois State Board of Health." There is no basis for Carrier's statement that this implies incompetence of Carrier's medical staff. It states rather clearly, that it is the Carrier's responsibility when it accepts medical opinions from its Doctors and laboratory. It is the Carrier and not the physicians that has the responsibility to comply with the Agreement and with the conduct of Labor-Management Relations.

The awards cited by the Carrier are distinguishable. The Claimant in the First Division Award 17496 (Carey) did not challenge the Carrier's medical department until two years after he was taken out of service. Further, he had been treated for many years. The Board said:

> "The record before us warrants the inference that his belated attack on the findings of the medical department is an after thought to bolster a pay claim and this conclusion is fortified by his refusal to submit to an examination by a board of three doctors for a final decision on his physical condition except on condition that he be fully paid for the two years he had been held out of service up to that time."

In First Division Award 18380 (Rader) "the claimant appeared for work after an absence of seven years, presented himself upon his own insistence to a doctor who was not the designated examining surgeon and who was unfamiliar with his coronary history. He then made a money claim because, instead of being immediately returned to active duty as a conductor of a fast streamlined passenger train, his case was reviewed and he was re-examined at the direction of the Chief Surgeon."

In First Division Award 15181 (Coffey) the Board said:

> "Over and above examining the medical proof submitted, we have looked to the circumstances that approximately four months

elapsed from the medical examination of April 12, to the time when claimant was able to protect his assignment, it must be weighed against the medical history of two earlier back injuries sustained by claimant and the comparatively long intervals in between, when he was able to protect his assignment, followed by the same condition recurring . . . Yet, a constant thrent existed that the old injury might be reactivated by reason of the very nature of the work. Under such circumstances it cannot be said that the carrier, having assumed the risk for four months, pending the exercise of deliberate judgment, was under an obligation to continue with an assumption of risk, after it became satisfied for good cause shown, that injury was and would continue to be chronic until there had been a full and complete recovery."

In Award 3266 (Carter) we said:

"Information in the possession of the employe which is not communicated to the Carrier is not pertinent in the face of a diagnosis of a communicable infection which has been made known to the employe. It was clearly the duty of the employe to submit his evidence to the Carrier that he was in a good state of health, and his failure to so do requires a denial of a claim for time lost during the period of his own dereliction."

In the dispute now before us the Claimant did present evidence that he was in "a good state of health" on February 6, 1957. What took place thereafter was at the Carrier's risk.

In Award 8535 (Bailer) we said: "Management may not delay unreasonably in reaching its decision regarding the physical fitness of an employe who has been on leave due to illness."

The Claimant in Award 9780 (Floming) delayed in the selection of a third doctor "and there is nothing in the record to indicate that the Carrier was guilty of any deliberate attempt to postpone the selection of the third doctor." The report of the Chicago Health Department dated January 31, 1957, which was received by the Carrier on February 6, 1957, states that no "evidence of venereal disease was found." There was no third doctor involved in this dispute. The Carrier did not request the Claimant to submit for examination by a third doctor.

On page 26 of the record Carrier says:

"Dr. Muir advised that she had requested Mr. Johnson to return to the Chicago Board of Health on February 12, 1957, and that there he was seen by one of their consultants in Syphology."

Dr. Muir's request for an additional examination was made before the Carrier's Chief Surgeon investigated the situation. He talked to Dr. Muir one day before the Claimant, at Dr. Muir's request, submitted to a second examination at the Chicago Board of Health (R 25).

In Award 2096 (Tipton) we said that: "The record fails to show the advice given by the physician was given in bad faith." In that dispute

the Claimant sustained an injury and the Carrier's physician advised that the Claimant "be permitted to remain at work in Aurora as there was no objection to his working on the ground or with only a minimum amount of climbing." We are not charging the Carrier's physicians in this dispute with bad faith. We do say that the Carrier is responsible for loss of time after being notified when the diagnosis first made by the Claimant's physician proved to be correct.

The Claimant in Award 4649 (Carmody) had a varied medical history from April 1940 to August 1948. We denied the claim because the record showed a divided opinion between the Carrier's physician and the Claimant's physician. We, therefore also said:

> "We remand the case to the parties for an impartial examination by competent medical authority, or authorities, selected by agreement between the parties in this dispute to determine claimant's physical fitness to perform the duties of a Pullman porter."

There was no medical disagreement in the dispute in Award 4816 (Shake). We remanded the case "to the parties for a fair and impartial determination of the Claimant's fitness to perform the duties of the position from which he has been withheld."

All of the other Awards cited by the Carrier are not germane to this dispute.

The Claimant contends that wrong positive Kahn test reports had occurred "at least four or five times over the past three (3) years, all of which were taken by Dr. Matson. Each time a repeat test had been given immediately and the second results were always negative." The Record does not support this allegation. On two occasions when the test reports were "doubtful" the Claimant was re-examined once within a week and another time within three weeks. The Carrier did not need to grant his request for re-examination on January 19, 1957.

The Claim for loss of tips (gratuities) amounting to ten per cent of the guaranteed wage is arbitrary and uncertain. This Board has no authority to assess damages based upon conjecture. Likewise, the claim for breakfasts, lunches and dinners is not allowable. These meals are eaten by the employes while they are at work in the diner and while the train is proceeding to its destination. The Agreement makes no provision for such meals.

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 Carrier violated the Agreement.

AWARD

The Claimant is entitled to recover for straight time wages lost from February 6, 1957, to the date he was restored to service as set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10598
DOCKET DC-10396

The Organization narrows the issue in this case to a single question, stating in "Employees' Rebuttal to Carrier's Ex Parte Submission" (page 48):

> "The only issue in this case is whether Carrier (acting through its agent, Company Dr. Matson) acted in good faith in refusing to give claimant a retest on January 19, 1957, when request for same was made by claimant.". . .

The Award properly resolves this specific issue in favor of Carrier after finding that the record does not support Claimants' erroneous allegations that Kahn tests given Claimant by Carrier's doctor in prior years had repeatedly proved to be in error.

Having thus resolved the "only issue" against the Claimant, the Award should have denied the claim in its entirety. But instead, after properly holding that Carrier had the unquestionable right to rely on the doctor's report of January 16, 1957 in withdrawing Claimant from service; that Claimant was not entitled to a re-examination on January 19, 1957; and that after receiving the conflicting report from the Claimant's doctor on February 6, 1957 Carrier had a right to have Claimant re-examined to resolve the conflict in the medical evidence, the authors of the Award proceed without foundation and in contravention of the expressed opinions of medical experts on both sides, to hold that:

> ". . . Although the Carrier was entitled to have the Claimant reexamined, which was done on February 7, **it would have been more prudent** and more equitable if the blood specimen taken on that day was again sent to the Chicago Board of Health or at least two specimens, one to the Chicago Board of Health and the other to the Illinois State Board of Health.". . .
>
> ". . . **We do not believe that the Carrier acted with reasonable prudence** after February 6, 1957." (Emphasis added)

The record discloses that the doctors acted for Carrier in this matter without interference, and this erroneous conclusion regarding the conduct of Carrier's doctors after February 6 is inexcusable for it is even contradicted by the expressed opinions and conduct of the Claimant's doctors.

The authors of this Award should have heeded our repeated and consistent rulings to the effect that "this Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the physical or mental fitness of an employe to work". **Award 4816.** According to our best information, this is the first time in the Board's history that our members have set themselves up as medical experts and have pretended to know that some course of action suggested by them alone would have been "more prudent" than the course of action selected by the medical experts.

The unfounded and self-contradictory opinions expressed in the Award do not inspire us with confidence in the medical ability of the authors, but even if they were correct and knew more than the doctors, they were in error in assessing penalties against the Carrier when it acted on the good faith advice of its doctors. Our Awards consistently recognize that during a period that a Claimant has been taken out of service on the good faith advice of a doctor, he is not entitled to compensation from the Carrier in the absence of some specific rule providing therefor. **Awards 4816** (Shake), **6753** (Parker), **8175** (Smith), among many others. In ignoring these clear Awards, and ordering Carrier to make payments to the Claimant which are not provided for by any rule in the applicable Agreement, the authors of the Award have exceeded the powers of this Board. As stated in **Award 9253** (Weston):

> ". . . It is our function to interpret the Agreement as it now stands and not to rewrite it in accordance with our own theories of labor-management relations . . ."

Also see **Awards 9606** (Schedler), **6935** (Coffey), **2029** (Shaw), **4322** (Elkouri), **9567** (Rose), **10008, 10172** (McMahon), **9314** (Johnson), **6856** (Carter).

Turning now to the action taken by Carrier after receiving the report of Claimant's doctor, Carrier's initial submission contains uncontradicted evidence that the delay from the time the conflict in medical reports became known was attributable to the doctors of both Claimant and Carrier and that any attempt to resolve the conflict more swiftly by sending a duplicate blood sample to the laboratory used by Claimant's doctor would have been contrary to his doctor's suggested procedure. Carrier's initial submission tells us (page 26) regarding the procedure recommended and followed by Claimant's Dr. Muir:

> ". . . **Dr. Muir advised that she had requested Mr. Johnson to return to the Chicago Board of Health on February 12, 1957, and that there he was seen by one of their consultants in Syphology. The consultant advised that a special test called the TPI test be carrier out (Trepanoma Participation Index). This test is only done by the United States Public Health Service in Georgia. In addition to the blood sample for the TPI test drawn when the consultant examined Mr. Johnson on February 12, 1957, he drew an additional sample on which he was prepared to make another test** called a 'Wasserman'. Dr. Muir of the Chicago Health Department advised that as soon as the blood Wasserman report came back that she would give a full report to Dr. Matson as well as the definite opinion of the consultant. **Dr. Matson advised Dr. Stockwell on February 28, 1957 that although Dr. Muir had told him that she**

would communicate with him as soon as the blood Wasserman report was available, that he called her office on February 21, 1957 and found that they were unable to locate the Wasserman report at that time. On February 26, 1957, Dr. Matson again 'phoned Dr. Muir, and found that the blood Wasserman and VDRL report were both negative and that the report would be in the mail. On receipt of this information he telephoned Dr. Stockwell in Detroit on February 26th, and Dr. Stockwell advised Dr. Matson in turn to notify Mr. Everson by telephone that the patient could return to work."

(Emphasis added)

Instead of challenging the truth of any of these statements in its rebuttal, the Organization tacitly admitted the truth of it by stating that the only issue in the case was as stated above.

Since the authors of this Award clearly went outside the record in this case to raise questions which the medical experts had not seen fit to raise with respect to the propriety of sending the sample of Claimant's blood taken on February 7 to the Illinois State Board of Health instead of sending it to the Chicago Board of Health, or to both, we asked Carrier if it would have been possible or desirable for the doctor who examined Claimant on February 7 to have followed the procedure suggested. Carrier's Chief Surgeon, Dr. B. W. Stockwell replied as follows:

". . . I would say that it would have been possible to submit specimens to the Chicago Board of Health, but that it was not done because it was felt essential for Mr. Johnson to be completely investigated, including examination by a specialist in syphology and with treatment if necessary. The claimant had previously been advised that this would be a definite requirement in the event of further positive tests. The action of the Chicago Board of Health's Dr. Muir in arranging for this special examination indicates the necessity for this approach and completely justifies the position of the Company Medical Department. The examination by the consultant in syphology, which examination, incidentally, was recommended by the Chicago Board of Health, was not held until 12 February 1957. The sending of additional blood samples to the Chicago Board of Health on 7 February 1957 would not have resolved the issue, as the laboratory test alone was insufficient to determine employability.

"'The question in this case is not which laboratory was used, but whether or not this Dining Car Waiter had infectious syphilis, and the record shows that examination by the specialist, with its unfortunate associated delay, was necessary; and we can see no justification for the statement that "We do not believe that the Carrier acted with reasonable prudence after February 6, 1957.'"

Now let us consider the allusion in the Award to two statements in Dr. Muir's letter of February 27, 1957 which are said to be "significant": The first statement reading:

"It will interest me to know whether or not there is any discrepancy in this report on the specimen you submitted to the laboratory of the Board of Health and this one."

It is not clear what "date" is referred to by "on the same date." Carrier's second test was taken on February 7, 1957, and the result of this test was fully reported in the Record.

The second statement alluded to reads:

> "It had been the experience of this office that the Kahn test is not so specific as the V.D.R.L. test, although it seems to be more sensitive."

The Award does not comment on this statement, but Dr. Stockwell comments on it as follows:

> "This means that the Kahn test is not as specific in identifying syphilis as the V.D.R.L. test. By specificity is meant that the Kahn test might be positive from some condition other than syphilis more frequently than the V.D.R.L. test. The Kahn test is more sensitive meaning that it will indicate an abnormal condition more quickly and thus in certain situations might identify a syphilitic condition when the V.D.R.L. test might overlook it."

In the light of these medical facts (which were placed before the Majority before the adoption of this Award), the Majority have clearly erred in setting themselves up as authorities on the medical procedures involved; and they have committed an even greater error in attempting, in contravention of all prior Awards on the point, to assess penalties against Carrier for holding Claimant out of service on the advice of doctors who admittedly acted in good faith — see the Awards cited above.

In addition to what we have said concerning the patent error of the Majority in attempting to award Claimant compensation from February 6 to February 27, 1957, we feel constrained to comment on two of the many other mistakes appearing in the opinion of the Majority.

First, there is the statement that Carrier, "in its Ex Parte Submission", imputed fraud to the Claimant by suggesting that someone other than Claimant may have been examined by Claimant's doctor at the Chicago Board of Health. We invite the world to search Carrier's Ex Parte Submission for any evidence that Carrier therein made the alleged imputation of fraud or misconduct to Claimant. The record establishes that Carrier immediately arranged for a re-examination of Claimant on receiving information from Claimant's representative that a doctor had examined Claimant and had not found evidence of venereal disease. Carrier also concurred in the selection of a specialist made by the doctor to whom Claimant had gone for examination in order to resolve the conflict in the medical reports which the two doctors had received from the Illinois State Board of Health and the Chicago Board of Health. There is nothing in the record which suggests a failure on Carrier's part to give full credence to Claimant's representation and cooperate completely in attempting to resolve the conflict.

While they unjustifiably accuse the Carrier of imputing misconduct to the Claimant, they take no exception whatever to the utterly unsupported and apparently malicious attack made upon Carrier's doctor in the Organization's Ex Parte Submission, which is published to all the world as part of the printed record in this case. The statement on behalf of Claimant at page 4 of the record that "Carrier's doctor did not properly draw the

tests or used contaminate equipment" and the statements at other points in the record charging Carrier's doctor with malice toward the Claimant are contemptible, indeed, in view of the statement in the Award that "We are not charging the Carrier's physicians in this dispute with bad faith. . . ." and the further statement that the Award does not imply "incompetence of Carrier's medical staff".

In view of the inconclusiveness of both the Kahn test and the VDRL test, and the fact that a Kahn test may correctly indicate the presence of a venereal disease when a VDRL test of the same blood fails to so indicate, plus the fact that a Kahn test or a VDRL test may give an indication of a venereal disease when none is present, there is nothing in this record that justifies the indication that the Kahn tests taken by Carrier's doctors were not properly taken or that they did not properly reflect the condition of Claimant's blood at the time they were taken.

Since there is no evidence in the record that impeaches the competence or integrity of Carrier's doctors and since the Award properly recognizes that fact, it is amazing that the authors could be so completely tolerant of the false attack made on those doctors in the Organization's Ex Parte Submission and at the same time be so terribly offended by the imagined imputation of misconduct to Claimant which they erroneously claim to find in Carrier's Ex Parte Submission.

The second incidental error which we feel requires comment is the citation of **Award 3266** (Carter) for the proposition that a Carrier must act at its own risk when it requires a further examination of a Claimant after receiving a statement from the Claimant's doctor indicating the Claimant is fit for service. In **Award 3266** (Carter) the Claimant was not returned to service on the sole advice of the Claimant's doctor that Claimant was in good health; to the contrary, upon receiving that information the Carrier required the Claimant to be re-examined by the Carrier's own doctors and since that re-examination disclosed that the Claimant was actually fit, he was returned to service. Since the Carrier's re-examination of Claimant, following receipt of the conflicting medical report of Claimant's doctor in that case resolved the conflict and established Claimant's fitness, the Board in that case was not confronted with the question that arises when the results of the re-examination of Carrier's doctor are in conflict with the report of the Claimant's doctor. Since the issue of compensation to Claimant in such circumstances where the conflict persists was not involved, that Award obviously has no bearing on the question now before us. On the other hand, our numerous Awards, cited above, dealing specifically with this question have consistently held that during the period that the conflict between reports of the doctors is being resolved a Claimant is entitled to no compensation where there is no showing that Carrier unreasonably refuses to cooperate in resolving the conflict.

Furthermore, contrary to what is indicated in this Award, Carrier did not receive from Claimant evidence that he was in "a good state of health" on February 6, 1957. What the Carrier received was a notice from Claimant that he had been examined by a doctor and that "no evidence of venereal disease was found" and "a serological test for syphilis was made". However, the test for venereal disease that had been used was admittedly not an infallible test, and it sometimes fails to detect a venereal disease that would be detected when the more sensitive test used by the Illinois State Board of Health for Carrier's doctor is used. In view of these facts,

and the additional fact that under the regulations of the U. S. Public Health Service Carrier was required to hold Claimant out of service so long as he was "suspected to be a carrier of or in communicable period of . . ." syphilis, Carrier was precluded from restoring Claimant to service without first resolving the conflict in the medical reports, as was appropriately done. Under our consistent Awards cited above, Claimant was not entitled to compensation while the conflict was being resolved, and there is nothing in **Award 4816** (Carter) or any other Award mentioned during the handling of this case to the contrary.

While there are numerous additional inconsistent and indefensible statements in the Award, we feel that no useful purpose would be served in discussing them individually.

That portion of the Award seeking to allow Claimant compensation from February 6 to February 27 is clearly erroneous.

/s/ G. L. Naylor

/s/ O. B. Sayers

/s/ R. A. De Rossett

/s/ R. E. Black

/s/ W. F. Euker

ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10598, DOCKET DC-10396

The dissenters have admitted that the test used by the Carrier's agent is inconclusive and "may give an indication of a venereal disease when none is present." In view of their admission, a dispassionate reading of the Award and their dissent will show that the Carrier, through its agent, made a mistake for which they want the employe to pay.

/s/ W. W. Altus
W. W. Altus

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10598, DOCKET DC-10396

Indeed it is disappointing to find the Labor Member striving to create the erroneous impression that this record contains evidence of a "mistake" on the part of the doctors who acted for Carrier. If the record contained any such evidence, the Labor Member would have directed our attention to it.

The only "mistake" that is established by this record, if it can be said that a mistake was made at all, is the mistake of Claimant in acquiring symptoms of communicable syphilis; symptoms which registered positive on a properly executed Kahn test. The fact that a subsequent intensive examination by a syphilologist and a TPI test by the United States Public Health Service ultimately convinced the doctors that Claimant was not affected with communicable syphilis does not erase the fact that he had the symptoms which were disclosed by the Illinois Laboratory tests.

Because of the extreme importance of protecting employes and the public against communicable diseases, regulations of the United States Public Health Service require Carrier to remove an employe from service whenever he has symptoms of disease and is therefore "suspected to be a carrier of, or in a communicable period of, any communicable disease".

Contrary to the unwarranted implications of the Labor Member's answer to our dissent, there is no competent evidence in this record tending to establish that the symptoms of communicable syphilis detected by the Illinois Board's Kahn test were not in fact in Claimant's blood, or that those symptoms did not warrant a reasonable suspicion that Claimant had communicable syphilis. So long as there was basis for such a suspicion, Claimant was not entitled to work and he was certainly not entitled to be paid for not working.

It is Claimant, and not Carrier, who must be charged with responsibility for the symptoms of disease found in his blood. Doubts as to Claimant's state of health created by the discovery of those symptoms were resolved through procedures recommended and controlled by the Claimant's doctors, hence no fault is imputable to Carrier for the delay occasioned by those procedures.

/s/ G. L. Naylor

/s/ O. B. Sayers

/s/ R. E. Black

/s/ R. A. De Rossett

/s/ W. F. Euker