

Award No. 11143

Docket No. CL-11017

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD, NEW YORK AND
EASTERN DISTRICT
(EXCEPT BOSTON AND ALBANY DIVISION)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad, Eastern District, (except Boston Division):

That Mrs. Veronica Quigley, Charwoman, Central Terminal, Buffalo, N. Y., be compensated for all monetary loss from February 4, 1957 to March 11, 1957, inclusive, during which period she was improperly held out of service.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft in which the claimant in this case held a position, and the New York Central Railroad Company, Buffalo and East, — hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective September 1, 1922 as modified or revised effective on various dates, including April 1, 1923 and September 1, 1949, together with all mutually agreed upon interpretations and supplements thereto, covering Clerical, other Office, Store and Station Employees, between the Brotherhood and the Carrier, which has been placed here in evidence.

The claimant, Mrs. Veronica Quigley, was a regularly assigned Charwoman at Central Terminal, Buffalo, N. Y., with a seniority dating of January 27, 1930, or approximately 28 years.

The record indicates that Mrs. Quigley was not permitted to return to work on February 4, 1957 upon return from a leave of absence because of illness and presentation to the Carrier of medical proof from her doctors that she was physically able to perform her regular duties.

"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 employees."

CONCLUSION

The instant claim has no merit. There has been no violation of schedule rules or past practice. Carrier's action in not permitting the Claimant to return to service during the period in question was only based upon the professional opinion and recommendation of its medical staff that Claimant's physical condition prohibited such action. There was nothing capricious or arbitrary. As soon as Claimant's physical condition permitted she was promptly returned to service. Claimant is not entitled to any compensation under the provisions of the applicable Agreement. The claim should be denied.

All data incorporated herein has been presented to the Clerks' Organization in writing and/or conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The New York Central Railroad Company.

The Claimant, Mrs. Veronica Quigley was a regularly assigned charwoman at Central Terminal, Buffalo, N. Y. Claimant was off duty beginning August 22, 1956. She entered the hospital and was discharged from the hospital on October 16, 1956. Claimant reported for a return-to-service examination on February 1, 1957. Carrier's doctor advised her that she could not return to work until the sinus tract was healed. Claimant submitted a report from her attending physician indicating that she was physically able to resume her duties on February 4, 1957. Claimant thereafter presented herself for further examinations by the Carrier on February 7, and 27, 1957. On March 8, 1957, she was examined and declared sufficiently healed so as to allow her to return to work. Claimant returned to work and this claim was filed in her behalf for the loss of work between February 4, 1957 and March 11, 1957.

As we have held previously, the Carrier has the right to require a physical examination even though the employee provides the Carrier with a copy of the report by employee's personal physician. (Award 10920 Boyd). The remaining issue to be determined is whether Carrier acted arbitrarily. The Carrier's physicians must also act in good faith. There is not a sufficient showing in the record to support a finding that Carrier's physicians acted arbitrarily or unreasonably.

For the foregoing reasons, we believe the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.