

**Award No. 13523**

**Docket No. CL-13887**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Kieran P. O'Gallagher, Referee**

**PARTIES TO DISPUTE:**

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

**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5315) that:

1. Carrier violated the rules of the Clerks' Agreement when the local company doctor held Savino Muggeo out of service for re-examination by Chief Surgeon Mishler, who found Mr. Muggeo fit for duty, and

2. Carrier compensate Mr. Muggeo for one day's wages for each day he was held from service during the period September 25, 1961, through October 25, 1961, at the pro rata rate of pay of his position. (Claim #1340.)

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Savino Muggeo was employed by the Erie-Lackawanna Railroad October 8, 1945. During his period of employment, he has had a recurrence of a bronchial ailment which is well known to the company doctors, as he has had several physical examinations. In each case, he was returned to service promptly. Mr. Muggeo became ill on August 31, 1961, and he was approved for work by his family physician to be effective September 25, 1961. Copy of Dr. Granito's statement is attached hereto as Employees Exhibit "A". Carrier's Officer at 28th Street Station, New York, N. Y. ordered Mr. Muggeo to report to company doctor at Jersey City, N. J. for examination. Dr. Moriarity suggested that Mr. Muggeo get a physical examination by his personal physician including an X-Ray. This was done by having him placed in St. Joseph's Hospital in the Bronx. The X-Ray having been made, Mr. Muggeo reported to Dr. Moriarity, the company's local doctor, who held him out of service. Dr. Moriarity at that time told Mr. Muggeo that he had tuberculosis and would have to be re-examined by Company Chief Surgeon Dr. Mishler at Cleveland, Ohio.

Mr. Muggeo was unable to meet with the Chief Surgeon on October 17, 1961 for personal reasons, but was examined on October 24, 1961, and he was found physically able to return to his regular employment. Mr. Muggeo was OK'd for work and reported and went to work on October 25, 1961. Mr. Muggeo could have worked the entire period involved.

This claim was handled in accordance with the established procedure up to and including the highest officer designated for handling employee matters. Claim was filed with Mr. F. Diegtel, Assistant Vice President, Erie-Lacka-

work but that he was placed on a diet and a hypoglycemi agent and that the doctor expected his situation would be promptly corrected.

"Apparently that expectation was realized because, after examination on June 13th, the Chief Surgeon returned him to limited service.

"There is no valid basis for the claim.

"AWARD: Claim denied."

#### IV CONCLUSION

It has heretofore been shown that Petitioner's claim for dates subsequent to October 17, 1961 is without merit in any event. Award 9307 which is just one of many.

Carrier has further heretofore shown that Petitioner's claim, which is founded on the Physical Re-examination agreement, is without merit. It therefore followed that this claim is nothing more than a plea for this Board to grant equity. Awards 8057, 7577, 8154, 7480, 7412 and 7068, cited, support the principle that this authority the Board does not have.

Carrier has also heretofore shown that the decision to hold claimant out of service was neither arbitrary, capricious nor unreasonable. It was based upon sound reasoning of learned medical men and only after comparing the diagnosis of four (4) learned and skilled medical men was claimant qualified for service by the Chief Surgeon. This Board has consistently held that it will not substitute its judgment for that of men schooled in the field of medicine. Awards 5815, 6764 and 6942.

The Carrier reiterates that the liabilities it is confronted with insofar as the physical condition of its employees is concerned are tremendous. This being as it is Carrier should have the absolute right to insure that every possible precaution is taken to preclude against injury to itself, its employees and the public. Awards 875, 5908, 8049, 8394 and many others. Carrier's right to hold an employe out of service on the bonafide diagnosis and advance of a physician is firmly supported by Awards 2096, 8175, 8535 and 10907.

Finally, Carrier has shown that the conditions of the understanding on Physical Re-examination have either been met or are not applicable in this dispute. First Division Award 18733, SBA 133 Case 1109-47, SBA 27 Case 1898-51 and SBA 427 Case 1789 are authoritative proof that this claim is without merit.

Based upon the facts and authorities cited, Carrier submits that this claim is without merit and should be denied.

**OPINION OF BOARD:** On September 25, 1961, the Claimant was required to undergo physical examination by a company doctor after having been out of service for a month account of illness. The examination by the company doctor, which included X-Ray resulted in the Claimant being withheld from service for re-examination by the Chief Surgeon, Dr. W. E. Mishler, at Cleveland, Ohio. This re-examination was held on October 24, 1961, and the Chief Surgeon permitted the Claimant to return to service with the proviso that he be re-examined in one year. The claim is based on the allegation that the company doctor at New York, Dr. Moriarity, had erred in his diagnosis when he held the Claimant out of service for re-examination by the Chief Surgeon,

and that an unreasonable time elapsed between Dr. Moriarity's order for a re-examination by the Chief Surgeon and the time that said re-examination was conducted.

In the first place the re-examination by Chief Surgeon Mishler was originally scheduled for October 17, 1961, and was deferred to October 24, 1961 at the request of the Claimant.

The Claimant alleges that since the Chief Surgeon ordered him returned to service upon re-examination on October 24, 1961, that Dr. Moriarity's diagnosis was incorrect.

We can find no reason to substitute our judgment for that of a qualified physician of many year's experience; neither do we find any evidence to support the Claimant's contention that too long a time elapsed between the date of Dr. Moriarity's examination (September 25, 1961) and the re-examination of the Claimant at Cleveland, Ohio by Chief Surgeon Mishler. A careful review of the current Agreement, the record and of Letter of Understanding dated July 24, 1948, identified as Memorandum Agreement No. 6 fails to reveal any basis for the claim in the light of the facts as shown and we must therefore deny the claim.

**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 29th day of April 1965.