

Award No. 14172  
Docket No. DC-15434

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Benjamin H. Wolf, Referee

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYEES' LOCAL 385**  
**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD**  
**COMPANY**

**STATEMENT OF CLAIM:** Claim of Joint Council Dining Car Employees Local 385 on the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Waiter Fred Morrison, that Claimant be compensated for all time lost since being recalled from furlough account of Carrier's refusal to allow Claimant to work as waiter in violation of the Agreement and in abuse of its discretion.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant was recalled from furlough on June 1, 1964. He was not, however, allowed to work because he was disapproved for service by Carrier's Chief Surgeon account of alleged unsanitary condition of his teeth. Claimant was told to secure the necessary dental work from his personal dentist and that upon submission of proof that this work was being done, Claimant was to receive authorization from Carrier's Superintendent, Dining Car Dining Car Department, for re-examination by Carrier's chief surgeon. Claimant did secure the services of a dentist and he and the Organization's General Chairman presented a statement to Carrier's Superintendent from Claimant's Dentist and requested authorization for a re-examination by Carrier's Surgeon.

Carrier's Superintendent refused to issue the authorization for re-examination and under date of July 21, 1964, Employees filed a time claim on behalf of Claimant for all time lost for being held out of service since June 1, 1964 until he was restored to duty. (Employees' Exhibit "A") Further appeal was made on August 5, 1964 to Carrier's Assistant to Vice-President, Personnel, who, after conference, and under date of September 18, 1964 declined the claim. (Employees Exhibits "B", "C", and "D").

**POSITION OF EMPLOYEES:** Employees in this dispute do not question the right of a Carrier to, in the first instance, withhold an employee from service pending the employee securing dental or medical treatment required by its physician. The issue, however, in this case is whether or not a Carrier can refuse to grant such an employee a re-examination where the employee

has followed the Carrier's instructions and secured the dental or medical treatment required.

This issue, moreover, has, in substance, been before your Board in several other cases. For example in Award No. 10598, this Division, it was held that where an employe "presents evidence" to a Carrier "that he was in a good state of health", "what takes place after that is at the Carrier's own risk". In this award, the Board goes on to say:

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

The Board in Award No. 10598, distinguishes between the facts in that case, and the facts in Award 3266 and states:

"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 do so requires a denial of a claim for time lost during the period of his own dereliction."

In the instant dispute, Claimant did submit evidence to carrier that the condition for which he was being held out of service had been corrected. When Carrier received this evidence, Carrier became obligated to authorize a re-examination of Claimant by its surgeon. Carrier's refusal to do this constituted a clear violation of Claimant's rights under the agreement, for if a Carrier may not delay unreasonably in reaching its decision regarding the physical fitness of an employe, a Carrier surely cannot refuse to re-examine an employe where the employe has submitted evidence of his fitness.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Furloughed employes recalled to service are required to report to a Company Doctor for a physical examination before reporting for work.

In accordance therewith, furloughed Waiter Fred Morrison was recalled to service and on May 25, 1964 was given his physical examination by Doctor R. Householder, Carrier's Chief Surgeon. On May 28, 1964, Doctor Householder disapproved claimant Morrison for service account bad teeth. Copy of Form C. S. 302, Report of Physical Examination of Waiter Fred Morrison, disapproving claimant Morrison for service is attached hereto as Carrier's Exhibit "A".

As a result of his disapproval for service by Carrier's Chief Surgeon, Dr. Householder, claimant Morrison was accordingly held out of service by Mr. W. R. Jones, Carrier's Superintendent, Sleeping and Dining Car Department.

Had not waiter Morrison been disapproved for service by Carrier's Chief Surgeon on May 28, 1964 he (Mr. Morrison) would have worked as waiter only during the busy summer months of June, July and August after which he would have again reverted to the furloughed list.

**OPINION OF BOARD:** Claimant was disapproved for service by Carrier's Chief Surgeon account of alleged unsanitary condition of his teeth after he had repeated warnings for over two years. He was told to secure the necessary dental work and that, upon submission of proof that the work was being done and when it would be completed, he would be re-examined.

Claimant submitted a statement which purported to be from his dentist which gave no indication as to when the work would be finished. In that respect it did not comply with the conditions set by Carrier for a re-examination.

We note that Claimant was to be out of service only so long as he failed to get his dental work done. He has the power to solve his predicament by doing so.

The Organization does not challenge Carrier's right to disapprove Claimant for service. The gist of the claim is Carrier's refusal to permit Claimant's re-examination. Under the circumstances of this record we cannot say that Carrier's refusal was improper.

**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 Carrier did not violate Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.