

Award No. 14866
Docket No. CL-16050

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE INDIANAPOLIS UNION RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the Terminal Committee of the Brotherhood (GL-5962) that:

- (1) The Carrier violated the current Clerk's Agreement, effective January 1, 1956, as revised, when on October 4, 1965, it refused to permit Employee T. P. McGinley, Sorter at Indianapolis, Indiana his right to return to Carrier service from leave of absence without first submitting to physical examination by a company physician.
- (2) Carrier further violated the Clerks' Agreement and acted in an arbitrary, biased and a discriminatory manner when reports made by company physician did not indicate any ailment or illness which would keep claimant from performing the duties of his regular assigned position, and
- (3) That Mr. T. P. McGinley shall be restored to service, with full seniority rights to his assigned position and all other rights restored and compensated at Sorter rate, effective October 4, 1965, and continuing thereafter until such time as he is restored to service, and
- (4) The Carrier shall be required additionally to compensate Mr. T. P. McGinley for all monetary losses sustained for work and/or compensation he would have been entitled to and/or perform, had he not been improperly denied his rights to return to service, and
- (5) Mr. McGinley shall be additionally compensated at the legal Indiana State percentage interest rate on all monies and/or benefits which would have been paid him effective October 4, 1965, and continuing thereafter until this claim is adjudicated.

EMPLOYEES' STATEMENT OF FACTS: T. P. McGinley was first employed by this Carrier at the Union Station, Indianapolis, Indiana, February 5, 1949, as an employee in the Mail and Baggage Department, and on March 1965 he was the occupant of Sorter position (Back Dock) at that location. On March of 1965, Employee McGinley was on a leave of absence from work account illness, said leave being properly requested of his supervising officer.

On October 1, 1965, Mr. McGinley reported to his supervisor and indicated his desire to return to service but he was denied that right.

For your ready reference, copies of the entire exchange of correspondence, on this claim, between the representatives of the Carrier and the Organization, are attached hereto. See Employees' Exhibit A.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Mr. Thomas P. McGinley was employed by The Indianapolis Union Railway Company January 28, 1949 as a Baggage and Mail Handler. Mr. McGinley was 43 years of age, weighing 141 pounds and had vision acuteness of 20/20 in both eyes. In later years (the exact time is unknown to the Carrier), Mr. McGinley developed diabetes. He was absent from his regular duties early in 1960 as a result of this disease, which necessitated the removal of his left great toe. Mr. McGinley was sent to the company physician and given a Return to Work examination March 28, 1960. Mr. McGinley failed the eye examination. However, after having his glasses changed he was allowed to continue working.

Mr. McGinley absented himself from duty in March 1965 for an ulcer on the right great toe. During the stay in the hospital a cataract was removed from his left eye. Mr. McGinley reported for duty on October 4, 1965 and was told to go to the Company Doctor (Dr. William H. Norman), for a Return to Work examination.

Dr. Norman discovered Mr. McGinley was wearing contact lenses and refused to let him return to work wearing such lenses. He was not given a physical at that time. Due to the fact that The Indianapolis Union Railway Company did not have a policy regarding the wearing of contact lenses, the Indianapolis Union President (who is also Vice President of the Pennsylvania Railroad) was contacted, and he instructed us to send Mr. McGinley to the PRR doctor to see if he could meet the PRR standards.

Mr. McGinley was told that if he were to purchase regular eye glasses, he would be allowed to return to work. Still no physical examination was performed. Mr. McGinley purchased eye glasses and returned to Dr. H. B. Hamilton, (PRR Doctor), who at that time performed a physical examination and disqualified Mr. McGinley for physical reasons.

On December 23, 1965 Mr. McGinley was sent back to Dr. Norman, the I. U. Railway Company doctor and he also disqualified Mr. McGinley for physical reasons.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was first employed by Carrier on January 28, 1949 in the Mail and Baggage Department at Union Station, Indianapolis, Indiana. From March 1965 until October 4, 1965, Claimant was absent from his position of Sorter in the Mail and Baggage Department because of illness. The record discloses that Claimant was hospitalized during part of this period for an ulcer and while in the hospital also had a cataract removed from his left eye.

On October 1, 1965, Claimant reported to his supervisor that he was ready to return to work. He was ordered to report to the Company Doctor for a

"return to work" examination on October 4, 1965. Although the attending physician failed to give Claimant a physical examination on that date, he discovered that Claimant was wearing contact lenses and refused to allow him to return to work. Claimant then obtained a prescription for bifocals to further perfect his corrected vision. On November 2, 1965, Claimant finally was given a routine physical examination and notified on November 8, 1965 that he was disqualified for service because of his physical condition.

An appeal was progressed on behalf of Claimant after a conference between the parties and a complete physical examination was conducted by Carrier's physician on December 23, 1965, culminating in a medical report disqualifying Claimant from service. The instant claim was thereafter duly processed on the property and is properly before the Board for consideration.

Organization contends that under Rule 17 of the Agreement, Claimant was entitled to return to his former position following his leave of absence or to exercise displacement rights thereunder and that no provision of the Agreement requires employees to submit to a physical examination following such a leave of absence. Organization asserts that Carrier engaged in dilatory tactics in assessing Claimant's physical condition despite Claimant's cooperation and further that Carrier's findings were arbitrary and capricious.

Carrier contends that the requirement of a physical examination on returning to work from a leave of absence because of illness is within the discretion of Carrier and in accordance with past practice. Moreover, Carrier cites its rejected offer to allow Claimant to return to service in a less strenuous capacity than he formerly held in support of its position that Claimant was not unjustly treated.

An examination of the Agreement reveals that it contains no express reference to the matter of physical examinations for employees. Under such circumstances, we have previously held in numerous Awards that the requirement of physical examinations is within the discretion of the Carrier. (Awards 8535, 10920 and 14049) Furthermore, Claimant in the instant case was absent from his regular duties on a previous occasion in 1960 at which time a diabetic condition necessitated the removal of his left great toe. Thus, Carrier's knowledge of Claimant's earlier illness amply justified the decision to require a physical examination.

Although Claimant was subjected to a series of examinations by Medical personnel of Carrier prior to a final determination that he was not physically qualified to return to work, we are of the opinion that the delays encountered by Claimant were not unreasonable under the peculiar circumstances involved herein. Furthermore, we find no probative evidence that the final medical report prepared by Carrier's physician was arbitrary, capricious or conceived in bad faith. Accordingly, we must 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 Carrier has not violated the Agreement.

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 October 1966.