



Award No. 16336
Docket No. SG-16628

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.:

On behalf of Mr. R. H. Strickland, former Signal Maintainer, Spartanburg, South Carolina, to be paid at the respective Signal Maintainer's rate of pay for all time lost, effective August 2, 1965, and thereafter, on the basis of eight (8) hours per day, five (5) days per week, including overtime hours that accrued during the total time involved, at the proper applicable rate of pay for the position he has been deprived of working; claim to continue until such time as Mr. Strickland is permitted to return to his former position of Signal Maintainer at Spartanburg, South Carolina. (Carrier's File: SG-22112)

EMPLOYES' STATEMENT OF FACTS: This dispute arose after Claimant (R. H. Strickland, former Signal Maintainer at Spartanburg, South Carolina) encountered delay in being permitted to return to work after an absence of several years following injuries sustained on duty. Following is a chronology of pertinent events and/or correspondence exchanged on the property:

July 25, 1964: Claimant wrote to Carrier's Signal and Electrical Superintendent, Mr. L. C. Brown, requesting permission to return to work as Signal Maintainer at Spartanburg.

September 15, 1964: Mr. Brown advised Mr. Strickland: "If you can submit evidence in the form of a statement from a reputable physician clearly indicating that you are now physically qualified to assume all the responsibilities and perform all the duties required of a signal maintainer, including walking track and climbing poles, further consideration will be given to your request that you be permitted to return to railway service."

October 25, 1964: Claimant sent Mr. Brown a report on a physical examination he had taken October 20th. This report was favorable, with no limitation on Claimant's activities. Claimant again asked to be permitted to return to work as soon as possible.

whether in his professional opinion Mr. R. H. Strickland is physically qualified to perform all the duties and assume all the responsibilities of a signal maintainer, including the walking of track and climbing of poles, that upon the selection by Drs. Black and Taylor of the neutral, Dr. Black will be permitted to submit to the neutral doctor his record of the medical history of Mr. Strickland, and that he or some representative of the Signal and Electrical Department will be permitted to explain to the neutral doctor the duties and responsibilities of a signal maintainer, which, of course, include the walking of track and climbing of poles, and that the expense of the neutral doctor will be borne equally by the railway company and the signalmen's organization. If you are willing to dispose of the case on the basis above outlined, please write me to that effect that the necessary instructions may be issued."

The General Chairman contended that the neutral doctor selected to examine Mr. Strickland should be kept completely in the dark, without the benefit of the medical history of Mr. Strickland, that the parties should be guided by what Strickland himself elected to tell the neutral doctor selected concerning the duties and responsibilities of a signal maintainer, and declined to agree to an examination of Strickland by a neutral doctor under conditions outlined by the Signal and Electrical Superintendent referred to above.

The General Chairman appealed claim through the usual channels on the property up to and including the Director of Labor Relations, the highest officer of carrier designated to handle such matters and, finally, in letter dated November 16, 1965 (Carrier's Exhibit T-9), advised the Director of Labor Relations that he was agreeable for Strickland to be examined by a neutral doctor under the conditions outlined by the Carrier. Dr. S. O. Black, Jr. and Dr. Robert H. Taylor, Strickland's personal doctor, selected Dr. Charles B. Hanna as the neutral doctor to examine Strickland.

In letter dated December 30, 1965, Carrier's Exhibit T-11, the Director of Labor Relations advised the General Chairman, among other things, that:

"Mr. Strickland was examined on December 14, 1965 by Dr. Charles B. Hanna, Spartanburg, S. C., who has reported that it is his belief that Mr. Strickland could be employed at the job with the specifications submitted to him, and that he recognizes it would be necessary for Strickland to climb poles and walk track, that he believes Strickland has completely recovered from his original injury and believes that he could return to the type of work of his former employment which, of course, was that of signal maintainer.

In view of the report made by Dr. Hanna, I am instructing that Mr. Strickland be permitted to return to railway service as signal maintainer at Spartanburg, S. C."

Accordingly, Mr. Strickland was permitted to return to work as Signal Maintainer at Spartanburg, S. C. on January 3, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: The chronology set forth in the Organization's ex parte submission indicates that in January, 1965 Carrier denied Claimant's request for a medical examination by a neutral doctor. This followed conflicting opinions by Claimant's and Carrier's doctors as to his ability to return to work.

Claimant did not protest the decision within 60 days, and did not again communicate with Carrier until July 22, 1965. At that time he wrote to say that he wanted to return to work on August 2. Based upon its doctor's previous findings, Carrier on July 30 denied the request.

On September 11, the Organization filed a claim, seeking pay for Claimant from August 2, expressing the view that since a neutral doctor should have been utilized, the claim was justified. On October 21, Carrier denied the request for pay but agreed to the appointment of a neutral doctor on certain conditions. One was that Carrier's doctor submit Claimant's medical history to the neutral doctor. The Organization initially rejected the conditional offer, but on November 16, accepted it. Claimant was examined on December 14, found to be fit for duty, and was reinstated on January 3, 1966.

Claimant seeks pay from August 2 to the date he was reinstated.

It is significant that Claimant did not challenge Carrier's decision in January denying his request for examination by a neutral doctor. If that were to be challenged, a claim should have been instituted within 60 days. Thus on July 22, when Carrier denied Claimant's request to return to work, it was properly relying upon the finding of its own doctor. When Carrier replied to the Organization's letter by agreeing to a neutral doctor with conditions, it was not acting unreasonably, since the conditions were reasonable and when the Organization agreed to the condition the neutral doctor was appointed.

Claimant, not Carrier, was the more responsible for his failure to work from August through December. Had Claimant challenged Carrier's January denial of a neutral doctor within 60 days, the issue would long before have been resolved. Further delay would have been avoided if Carrier's conditions for a neutral doctor had been promptly accepted. Under the circumstances, it cannot be held that Claimant is due any pay for the period claimed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 24th day of May 1968.

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