



Award No. 17215

Docket No. CL-17535

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David H. Brown, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6406) that:

- (a) The Carrier violated the Clerks' Agreement when it arbitrarily withheld employe John J. Mahoney from service.
- (b) Mr. J. Mahoney, Yard Clerk, shall be compensated for monetary loss from September 24, 1966 to November 20, 1966 inclusive.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. Mahoney is a regularly assigned yard clerk at the Carrier's South Chicago yard facility, with a seniority date of July 23, 1941.

In 1962 Mr. Mahoney contacted pulmonary tuberculosis and was confined in the Chicago Municipal Tuberculosis Sanitarium for a period of approximately one year, after which he was released for work. He faithfully discharged his duties until approximately June 4, 1964, when he became afflicted with polyneuritis in his lower extremities and was incapacitated until the latter part of June 1966, when he again was released for work by his personal physician and at which time he reported for a physical examination by the Carrier's Chief Medical Examiner, with a statement from his personal physician authorizing his return to work and a record of his stay at the South Shore Hospital. Copies of both the statement from his personal physician authorizing his return to work and the record of his stay at the South Shore hospital were not made available to the employe's representative, but were presented to and filed with the Carrier's Chief Medical Examiner. No pretense of an examination however, was made and Mr. Mahoney was told that he would have to submit a current x-ray report on his lung condition, notwithstanding the same were already on file with the Carrier and submitted by the sanitarium in 1963 and that Mr. Mahoney's personal physician clearly stated in his statement that the tuberculosis was arrested and that Mr. Mahoney reports for followup tests every three months.

X-rays from the clinic were not made available to Mr. Mahoney until July 8, 1966, when he again reported back to the Carrier's Chief Medical

standing that Mr. Mahoney's personal physician has not thoroughly examined him for some time.

This letter is to remind you of our understanding that you would contact Mr. Mahoney and inform him of the doctor's decision. If it is still Mr. Mahoney's desire to be examined he should arrange separately for an examination by his personal physician and for a further examination by Dr. Reilly so that these two doctors may again confer as to his present condition."

A few months later, and only after the Carrier's doctor had made several subsequent inquiries of the claimant as to when he was coming in for an examination, did he finally report to Dr. Reilly for a physical re-examination. In fact, on October 21, 1966, Dr. Reilly called my office to explain that he had been unsuccessful in getting the claimant to come in for an examination as requested in my September 12, 1966 letter. Further, the Retirement Board had requested information as to Mr. Mahoney's physical condition. As a result of my conversation with Dr. Reilly, I personally called Mr. Mahoney at his home and told him that until he submitted to the examination neither the Retirement Board, nor the two doctor panel could decide his case.

(Exhibits not reproduced)

OPINION OF BOARD: Carrier is alleged to have arbitrarily withheld Claimant John J. Mahoney from service from September 24, 1966 to November 20, 1966. The claim is that Carrier's Chief Medical Examiner, Dr. W. J. Reilly, was arbitrary in his handling of Claimant's request for a determination, by a panel of 2 or 3 doctors, of Claimant's fitness for duty.

The record herein is one which is very poorly documented. Certainly Employees' assertions relative to any malice on the part of Dr. Reilly are not warranted. We think that the record does show that Mr. Mahoney failed to diligently pursue his rights through insisting on expeditious processing of his request. Nevertheless, Dr. Reilly is shown to have been responsible for considerable delay. On September 7, 1966 Claimant's application for disability was forwarded to Dr. Reilly. Nothing was done until October 21, when, on request of the Railroad Retirement Board, Mr. C. M. Crawford (Assistant to General Manager) instructed Dr. Reilly to proceed. Thereupon Claimant was asked to report for a physical examination, but he demurred because his glasses were broken. When he finally reported, on November 16, he was certified for return to duty.

A detailed exposition of the record in this case would be of doubtful illuminative value to the reader. Our finding of a lack of diligence on both sides is based on cumulative evidence sufficient to support a dual finding.

While the record from both Carrier and the Organization is such that no precedential value should be attached to this decision, we think justice demands a sustention to some extent. Knowing no better formula, we will employ the Solomonic technique of slicing the child in two parts. Mr. Mahoney's claim will be sustained to the extent of one half of the time claimed.

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 violated.

A W A R D

Claim sustained to the extent indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.