



Award No. 18234

Docket No. TE-18352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
FORT WORTH AND DENVER RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Fort Worth and Denver Railway, that:

1. Carrier violated the Agreement when it arbitrarily and likewise improperly held non-telegrapher E. V. Shackelford, Anson, Texas, out of service from December 6, 1967 until February 7, 1968.
2. Carrier shall compensate Claimant E. V. Shackelford for all time lost with all seniority rights, vacation rights and all other rights unimpaired because of the violation set forth above.

OPINION OF BOARD: Claimant became ill on November 7, 1967 and Carrier was advised by Claimant's son that: "Dad in Hospital at Anson Heart Attack yesterday, at 4 A. M. Date Resting Under Sedation." Claimant was treated by a Dr. A. G. Andrus, M.D., who on December 5, 1967 released Claimant to return to work. Claimant advised Carrier of his release to return to work and informed Carrier that he wanted to protect his regular assignment as agent at Anson as of 8:00 A. M. December 6, 1967. Carrier's Chief Surgeon informed Claimant that he had to wait three (3) months before he could return to work. Claimant on his own was examined by another doctor, Zane R. Travis, M.D., who submitted a copy of a written medical report covering his examination of Claimant to Carrier's Chief Surgeon, Dr. W. P. Higgins on January 18, 1968. In said report, Dr. Travis refers to borrowing Dr. Andrus' electrocardiograms and lab studies and concluded since the Claimant did not develop a significant Q-wave or invert his T-waves that it should be called a marked coronary insufficiency rather than an acute myocardial infarction.

Dr. Travis went on to comment as follows:

"This patient has apparently had several episodes of severe coronary insufficiency. From a review of electrocardiograms I can not say that he has had a myocardial infarction, however. The patient is doing very well at this time and since his job with the Ft. Worth and Denver Railway involves desk work only, I would suggest that he be allowed to resume his occupation until regular retirement time."

Upon receiving a copy of Dr. Travis' report, Carrier's Chief Surgeon should have taken steps within a reasonable time thereafter to have Claimant examined by a doctor of Carrier's choosing. Having failed to do so, we find Carrier's action was arbitrary, and will sustain the claim for pay for time lost from January 25, 1968 to February 7, 1968.

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 in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1970.