

SPECIAL BOARD OF ADJUSTMENT NO. 266

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

EMPLOYEES' STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate Extra Telegrapher D. W. Clark, occupant of a temporary vacancy on 1st shift Elmira Ticket Office, Elmira, N. Y., for November 23, 1955, on which date he was ordered to report to Scranton, Pa., for Physical examination thereby losing a day's work.
2. Carrier shall, in accordance with Article 13 of said Agreement, compensate D. W. Clark for a day's pay of \$14.82, plus \$15.40 mileage allowance (220 miles at 7¢ per mile) and \$3.25 meal expense.

OPINION OF BOARD:

Claimant Clark worked for the Carrier from July 7, 1947 until about April 29, 1952, at which time he resigned from service in order to enter private business. On September 14, 1955 Claimant applied for re-employment with the Carrier but was physically disqualified by the Carrier's local physician at Buffalo, New York. The disqualification was due to a back injury which Claimant had incurred in an automobile accident and which had not sufficiently healed. He was advised by Dr. Creighton, the Carrier's local physician in question, to return for re-examination in about a month.

On October 14, 1955 Claimant was re-examined by Dr. Creighton and was approved locally for work. On October 17, 1955 Clark began performing service for the Carrier on a probationary basis. While there is a conflict between the parties on what transpired immediately thereafter, the weight of the evidence indicates that on or about October 25, 1955 the Carrier's Chief Surgeon Physically disqualified Clark after having reviewed the report submitted by Dr. Creighton as a result of the re-examination of the Claimant on October 14. It further appears that supervision permitted the Claimant to remain in service conditionally while arrangements were being made for the Chief Surgeon, who is located at Scranton, to give the Claimant another examination.

The Organization contends that the Claimant was directed by the Carrier to go to Scranton for examination by the Chief Surgeon, and that as a result the Carrier is obligated to reimburse Clark for the one day's pay lost by virtue of this trip and for the travel expenses incurred. The Carrier responds that an appointment with the Chief Surgeon was made for the Claimant for the latter's benefit and that Clark made this trip voluntarily for the purpose of removing the disqualification made by the Chief Surgeon so that the Claimant could remain in the Carrier's employ. The Carrier further points out that at this time Claimant Clark was still a probationary employee and therefore could have been dropped from service at the Carrier's discretion.

In any event, on November 23, 1955 the Chief Surgeon qualified the Claimant for employment. Clark's application for employment was finally approved on December 28, 1955. The subject claim was filed in his behalf on January 20, 1956.

We do not find sound basis for this claim under the circumstances that prevailed. Under the Carrier's established procedure, the approval of the Chief Surgeon is required before final approval of an individual's employment application is made. The Claimant made the trip to Scranton on November 23, 1955 for his own benefit in an effort to obtain the required approval of his physical qualifications. He held no seniority at this time and could have been dropped from service entirely at the Carrier's discretion.

AWARD: Claim denied.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

/s/ W. I. Christopher
W. I. Christopher, Employee Member

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

New York, N. Y.
December 3, 1959.

