

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York, New Haven and Hartford Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, when it failed and/or refused to permit Mr. Daniel Tarasevich to return to work — or to grant the Brotherhood's request of April 28, 1966, that a neutral doctor be appointed to examine Mr. Tarasevich in connection with his request to return to service.

(b) Carrier be required to compensate Mr. Tarasevich at the Signal Helper rate of pay for eight (8) hours each regular work day commencing June 6, 1966, and continuing until he is permitted to return to work. [Carrier's File: Railroad Docket No. 10545]

OPINION OF BOARD: Award No. 16316 directed that Carrier and Claimant or his representatives select a neutral third doctor for the purpose of examining Mr. Tarasevich and that the company doctor, Claimant's personal physician, and the neutral doctor present a written report to this Division of the National Railroad Adjustment Board on or before August 1, 1968, stating their conclusion as to the physical qualifications of Mr. Tarasevich for restoration to service as of March 28, 1966. For final disposition of this claim the parties have submitted the following medical report:

"June 18, 1968

Dr. Stanley Roth
New Haven Railroad
New Haven, Connecticut

Re: Daniel Tarasevich

Dear Dr. Roth:

Mr. Daniel Tarasevich was examined yesterday. He is a 46 year old man who was referred for evaluation regarding a possible lumbar intervertebral disc injury.

A report from his family physician, Dr. A. Duncan MacDougall, indicates that the patient experienced low back pain as long ago as 1955. There was no injury at that time. The patient states that he may have had a few other brief episodes of back pain prior to 1960.

The patient was involved in a minor accident on December 12, 1960, while working. The patient was driving a pick-up truck and the rear bumper caught a guy wire, bringing the truck to an abrupt halt. The patient states that he struck his ribs against the steering wheel but had no other apparent injury.

Approximately a year later, in November 1961, the patient developed pain radiating down the right lower extremity. He consulted Dr. MacDougall at that time and again in January 1963 with a recurrence of the same complaint. He was referred to a neurosurgeon, Dr. Donald Cooper. Dr. Cooper hospitalized him at Lawrence and Memorial Hospitals in New London in February 1963. Two attempts were made a myelography without success. The patient improved spontaneously and was discharged from the hospital without need for definitive treatment. He was eventually discharged by his doctors and told that he could return to work, some time in 1963 and 1964.

The patient states that in 1964, approximately, he was referred to the Newington Veterans Hospital by the railroad retirement board and a further attempt made at performing a myelogram, which also failed.

The patient states that since 1963 he has had no complaints whatever related to his low back or lower extremities. He has been physically active in various occupations such as carpentry and plumbing without experiencing and physical difficulty.

Physical examination at this time reveals a well developed man of 46 who is in no apparent discomfort. Examination of the low back region reveals normal spinal curvatures. There is no tenderness over the lumbar spine or paraspinal muscles. There is no evidence of muscle spasm. The patient flexes readily to bring his fingertips within five inches of the floor. There is normal reversal of the lumbar curve. There is an ample range of back extension and lateral bending without apparent discomfort. Straight leg raising carries readily to over 90 degrees on either side. There is no disturbance of gait. The patient walks readily on his heels and on his toes. There is no demonstrable muscle weakness in the lower extremities. There are no areas of sensory loss. The knee and ankle jerks are active and equal.

On the basis of the present examination I find no evidence of abnormality in the lumbar spine or of any process involving the nerve supply to the lower extremities. There is nothing to confirm the suspected diagnosis of lumbar intervertebral disc herniation. In my opinion there is no physical disability and therefore no physical reason why the patient cannot perform his normal work.

Sincerely yours,

/s/ Saul A. Frankel
Saul A. Frankel, M. D.

SAF:ah
cc: Mr. R. J. Fitzgerald"

On the basis of this report we find that Mr. Tarasevich is physically qualified to return to work. Since the parties through their neutral doctor have not expressed themselves on the physical qualifications of Mr. Tarasevich to return to service as of March 28, 1966, as requested in Award No. 16316, we are unable to determine if he was physically able to return to work on that date. We therefore restore him to service with pay to commence on June 18, 1968, the date the neutral doctor determined he was physically fit to resume his duties.

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 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 violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.