

WOOD *v.* GRAND LODGE OF BROTHERHOOD OF RAILROAD
TRAINMEN.

4-3851

Opinion delivered May 13, 1935.

INSURANCE—TUBERCULOSIS FUND—ALLOWANCE OF BENEFITS.—Where a tuberculosis fund, created by payment of nominal dues by the membership of a beneficiary association was not dispensed in accordance with contracts between the association and the members, but by a beneficiary board to afflicted members on application according to classification recommended by a medical examiner, a tuberculous member who had been paid full disability benefit of \$1,875 and was given hospitalization and home treatment at a cost of \$20,813.16, after which he was classified as

“On September 1, 1922, the tuberculosis department of defendant came into existence, and certain rules governing and controlling same were regularly adopted, said rules being first printed by defendant in its constitution and general rules effective September 1, 1928.

“At the 4th Tri-Annual Convention of the defendant, held at Cleveland, Ohio, May 12th to June 5th, inclusive, 1925, there was a discussion of the 1922 resolution creating the tuberculosis department and fund of defendant. A committee of nine delegates were authorized, by a resolution duly and regularly adopted, to determine the future hospitalization policy of defendant's tuberculosis department. This committee reported to said convention as follows:

“‘Your committee believes that a time limit should be fixed for the hospitalization of our tubercular members, and recommends that commencing September 1, 1925, that such hospitalization be limited to a period of three years.’

“Said report was adopted by said convention.

“In January, 1923, tuberculosis members of defendant were first hospitalized under the rules of said tuberculosis department.

“On February 2, 1908, plaintiff made application to defendant for a beneficiary certificate, Class C, \$1,350, which was the designated amount for Class C at that time. On May 4, 1908, certificate Class C, No. 200231, was executed and delivered to plaintiff by defendant, and accepted by him, granting to him all benefits accruing to plaintiff in said Class C, as provided in defendant's constitution, by-laws, rules and regulations then in force, or which might thereafter be adopted by defendant.

“Upon the inauguration of said tuberculosis department by defendant, plaintiff participated in said tuberculosis fund. On February 12, 1923, plaintiff was first hospitalized by defendant under the provisions of said rules of said tuberculosis department when he was admitted to Hendricks-Laws Sanitorium at El Paso, Texas, where he remained until June 17, 1923, when he left same upon the advice and with the permission of the physicians in charge of said institution. On August 13, 1923, plaintiff

“Pursuant thereto, on August 23, 1933, defendant, acting by its duly authorized general secretary and treasurer, wrote to the plaintiff a letter, which was received by plaintiff, as follows, to-wit:

“‘The beneficiary board, in reviewing the medical reports in the T. B. file in your case, find that you have been receiving benefits from the tuberculosis fund since February 12, 1923, and to date there has been expended in your behalf \$20,813.16, in addition to your claim which was paid in 1929, \$1,875; therefore, this is to advise you that you will be discontinued from further benefits of this fund effective as of September 1, 1933, for the reason that the medical reports clearly indicate that you have received maximum benefit from hospitalization and home treatment.’

“The amount expended by defendant in behalf of plaintiff under said rules of its said tuberculosis department is as follows:

“Cost of Sanatorium care.....	\$15,793.16
Cost of Home Treatment.....	5,020.00
“Total expense of said fund.....	\$20,813.16”

Appellant bases his right to recover on the constitution, general rules, and especially the rules relative to the distribution of the tuberculosis fund for the hospitalization and home treatment of such members as become afflicted with tuberculosis; construing them to mean that a member afflicted with tuberculosis has an absolute contractual right with the association to participate in said fund indefinitely according to classification. The rules, as we read and interpret them, make no provision whereby an afflicted member may obtain a vested right in the fund indefinitely. The fund is dispensed by a beneficiary board, selected for that purpose, on the recommendation of the medical director and lodge medical examiner. It is our view that the rules governing the tuberculosis department, irrespective of the class in which any member has been placed, leave it to the discretion of the grand lodge medical examiner and the beneficiary board to determine the further right of any afflicted member to participate in the fund. Under the rules and especially under rule 16, they may say when any afflicted member

