

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12883
Docket No. 12795
95-2-93-2-159

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers)
(CSX Transportation Inc. (former Chesapeake and Ohio Railway Company)).

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Fireman and Oiler J. D. Brown, ID# 185593, was unjustly withheld from service on May 14, 1992 by C.S.X. Chief Medical Officer, Dr. J. A. Thomasino
2. That accordingly, Firemen and Oilers D. J. Brown be restored to her position with the C.S.X. Transportation, Inc. be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective May 14, 1992, the payment of 10% interest rate added thereto."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within in the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant sustained an off-duty injury. She was certified to return to duty by her personal physician on the condition that she not be required to lift items weighting in excess of 50 pounds.

The Carrier's Chief Medical Officer rejected her request for conditional reinstatement contending that the Carrier did not have any position that would preclude lifting material in excess of 50 pounds.

The Organization responded that "... Carrier's own self-promulgated Safety Rules also places such a restriction on employees. For Ms. Brown to lift in excess of fifty (50) pounds would place her in violation of Carrier's own rules;"

The Carrier responded saying:

"...the reason for withholding Ms. Brown from service is not contrary to any Safety Rule."

Nothing further was written regarding the 50 pound weight restriction until the Submission to this Board. Before the Board, the Organization included a Safety Bulletin issued at the Carrier's Hunting Shops in 1982, setting forth a 50 pound limit for any one employee to lift and a 1983 letter addressed to a Machinist Local Chairman, reiterating the 50 pound limit on lifting for shop employees.

Unfortunately, this documentation comes too late. If this documentation had been made part of the on-property handling, it could have been considered, but in accordance with the procedures of the Board, we are precluded from considering any arguments and/or material that was neither raised nor exchanged on the property.

The Petitioner, who has the burden of proof, failed to establish that a policy existed at the Shops requiring employees to seek assistance when lifting any material weighing in excess of 50 pounds.

Under these circumstances, the Organization's contention that the Carrier handled Claimant's return to service in a manner contrary to its own Safety Rules is rejected.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of May 1995.