Award No. 6198
Docket No. 5995
2-ART-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

AMERICAN REFRIGERATOR TRANSIT COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the American Refrigerator Transit Company unjustly removed carman, R. H. Block, from service December 4, 1968 and unjustly held him out of service until February 10, 1969.

2. That accordingly the American Refrigerator Transit Company be ordered to compensate carman, R. H. Block, at the current rate of pay for carmen, eight hours per day, for each day he was unjustly held out of service from December 4, 1968 until February 10, 1969.

EMPLOYES' STATEMENT OF FACTS: American Refrigerator Transit Company, hereinafter referred to as the carrier, operates a car repair shop at Main and Barton Streets, St. Louis, Missouri, where a force of carmen are employed, including carman, R. H. Block, hereinafter referred to as the claimant. On August 7, 1968, claimant became ill and reported to Missouri Pacific Employes Hospital, where he was examined and advised that he was suffering from a cardiac condition. Claimant remained in said hospital for approximately three weeks before being permitted to go home. Following his discharged from the hospital he continued to return to the hospital for periodic examination and treatment in accord with Dr. Keffler's instructions. On November 26, 1968, claimant was examined and given an electrocardiogram and issued a written release certificate stating that he was able to resume work as a carman on November 27, 1968. On November 27, 1968, when claimant reported to work he was verbally advised by Superintendent, R. J. Papish, that he must report to Sutters Clinic for another examination before he would be permitted to resume work. Claimant did report to Dr. Shaw at Sutters Clinic as directed where he was given another physical examination and another electrocardiogram after which he was issued a written release certificate stating that he was able to resume work as a carman, November 27, 1968.

In Award 4324 your Board stated its obligation in cases involving the physical fitness of an employe withheld from service when it denied his claim based on the following principles:

> "In accordance with previous awards of this Division, we refuse to substitute our judgment in medical matters to resolve a conflict such as we find here, unless it appears that the Carrier was acting in an arbitrary or capricious manner, under the record before us, in holding Claimant out of service. The record herein supports no such finding by us, and accordingly we must deny the Claim."

Your Board again denied a claim in Award 5021 refusing to substitute its judgment for that of the Company's Medical Officer. In that Award your Board stated:

> "Neither Claimant's doctor nor this Board is authorized to overrule the decision of the Carrier's Medical staff and management as to Claimant's fitness for service, in view of the chronic nature and long persistence of Claimant's disabilities, and in the absence from the record of any showing of bad faith, reprisal, or arbitrary, capricious or discriminatory treatment."

In this case, the Claimant admittedly had a known cardiac condition. The Company's Chief Medical Officer requires that employes with a cardiac condition and duties similar to those of Claimant's remain out of service for six months from the time of the heart attack for the purpose of rest and recuperation. This standard as to an employe's physical condition is reasonable both in the light of medical history and the decisions of the courts. Your Board does not have authority to substitute its judgment for that of the Company's Chief Medical Officer. It follows that the claim that Claimant was unjustly withheld from service should be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within 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 were given due notice of hearing thereon.

The claim is that under the current agreement that the American Refrigerator Transit Company unjustly removed carman, R. H. Block, from service December 4, 1968 and unjustly held him out of service until February 10, 1969.

Our review of the record indicates that claimant became ill on August 7, 1968 and reported to the Missouri Pacific Employes Hospital, where he was examined and advised that he was suffering from a cardiac condition. Claimant remained in the hospital for approximately three weeks before being permitted to go home. Following his discharge from the hospital he continued to return to the hospital for periodic examination and treatment. On

November 26, 1968 claimant was issued a written release certificate stating he was able to resume work as a carman. On November 27, 1968 Claimant was advised by Superintendent that he must report to Sutters Clinic for another examination before he would be permitted to resume work. Claimant complied and was issued a second written release certificate stating that he was able to resume work as a carman. Claimant then reported to Superintendent, R. G. Papish and was permitted to resume work, same date. Claimant worked eight hours each assigned work day until he was advised by Superintendent Papish on December 3, 1968, that he was removed from service effective 4:30 P. M., that same day.

We find that claimant responded to each of the Carrier's requests for physical examination. Each of the Carrier's designated examining physicians determined Claimant was physically fit to resume work.

In view of the above, the action of the Carrier in removing the Claimant from service was improper. Nowhere in the handling of this Claim does the Carrier allege that Claimant was physically unfit to perform his assigned duties. There is no showing on what basis the Claimant was removed from service.

If there was a standard test requirement formulated by the Chief Medical Officer, it should have been made known to the Claimant.

While we do not dispute the Carrier's right to establish standards of physical fitness, it is certainly reasonable that such standards should be communicated to employes, nor may arbitrary rules derogate vested contractual rights.

In this case the Carrier did not satisfy the burden of relevant probative evidence for its action. The Carrier is obliged to make whole the loss of the fruits of Claimant's contractual entitlements for the period he was held out of service — from December 4, 1968 until February 10, 1969. We, therefore, will sustain the Claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November, 1971.

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