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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6347
Docket No. 6170
2-C&NW-MA-'72

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

Parties to Dispute: (System Federation No. 12, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Machinists)
(
(Chicago and North Western Railway Company

Dispute: Claim of Employees:

1. The Chicago and North Western Railroad violated the effective agreement by depriving Machinist Nick Sagalewich of 56 working days by removing him from service following a company accident.
2. The above named railroad violated Rule #35, Rule #55 and letter of understanding of the effective Agreement.
3. (a) That accordingly, the Carrier be ordered to reimburse above employe for the 56 days he was held out of service and (b) That the Carrier be made to comply with the Agreement.

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 waived right of appearance at hearing thereon.

On September 2, 1969, the claimant sustained an injury while on duty and for a period of time thereafter he received heat treatments for a ruptured muscle. On or about January 28, the claimant filed suit against the Carrier for damages on account of these personal injuries.

The doctor examined the claimant on December 17, 1969, and again on March 9, 1970, and reported he was able to do light work. During this time the claimant remained on the Carrier's payroll, but did very little or no work and often departed for home shortly after reporting for work. On March 5, 1970, the claimant was informed by his supervisor that he would not be carried on the payroll and that his pay would be taken care of by the Carrier's claim agent.

The claimant contacted the Carrier's Claim Agent who was to file a notice of sickness claim with the Railroad Retirement Board. At this time the claimant also arranged to take his accrued vacation until April 3, 1970. On May 5, 1970, the claimant's General Chairman ascertained that the Railroad Retirement Board had not received a notice of sickness claim. The General Chairman then promptly assisted the claimant to file necessary forms with the Board. When the Carrier's Medical Department received forms for describing the claimant's medical condition, the Medical Officer advised that the claimant should be working. On May 21, 1970, the General Chairman was informed of this latest medical opinion and he immediately notified the claimant that he should return to work. With this recommendation the claimant returned to work on May 25, 1970.

On June 9, 1970, the General Chairman asked the Carrier's Shop Superintendent what was being done to secure the claimant's back pay. The Shop Superintendent responded by letter stating that nothing was being done to secure any back pay pending the outcome of the claimant's lawsuit against the Carrier.

Rule 55 of the agreement provides that able employes shall be permitted to return to work. On two different occasions a doctor stated the claimant was able to return to light duty work. The claimant proceeded to work on a limited basis for some months. The Carrier's Supervisor then determined that the claimant should be dropped from the payroll because he was unable to work and informed him that he had a sickness claim to be processed by the Claims Agent. When the claimant attempted to process his claim the Carrier's doctor pronounced the claimant able to work. Later, during the processing of this case on the property the Carrier's Superintendent indicated back pay compensation depended on the claimant's lawsuit. In essence this case involved a conflict between the doctor's opinion that the claimant was able to work and supervisory opinions that he was unable to work. Doctors authorized the claimant to work and supervisors prohibited him from working.

The claimant was the man in the middle of a conflict between two separate departments in the Carrier's organization. Since the Carrier finally decided to put the claimant back to work, then the internal conflict was resolved in favor of the doctor's opinion and authority. It was determined that the claimant was able to work. Under Rule 55 able employes must be permitted to work so the Carrier violated the agreement when the claimant was dropped from the payroll.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1972.