

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. C.
((Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

1. That under the current agreement Coach Cleaner, Pauline E. Hicks was unjustly dealt with when she was denied the right to return to the service on October 19, 1970, and subsequent thereto.
2. That accordingly, the Carrier be ordered to restore the aforementioned Coach Cleaner to service and compensate her for all time lost since October 19, 1970, plus 6% per annum until she is restored to her rightful position, with vacation, health and welfare and life insurance rights unimpaired.

Findings:

The Second Division of the Adjustment Board, upon the whole record and 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.

Award No. 6539 remanded this matter to the property with the following instruction:

"Therefore, we direct that Carrier and Claimant (or her representative) select a neutral third doctor for the purpose of examining Claimant, and that the Carrier's physician, Claimant's personal physician, and the neutral doctor present a written report to this Division of the Board, within sixty (60) days of the date of this Award, stating their conclusions regarding the physical qualification of Claimant for restoration to her job as of October 19, 1970 and at present. The neutral doctor's report need not be concurred in by both of the other doctors. A detailed explanation of the duties of a Coach Cleaner shall also be supplied to the neutral doctor (By Petitioner and Carrier), so that he may properly evaluate the physical fitness of Claimant to perform the job.

"Upon receipt and consideration of the medical report directed above, the Board will make its final disposition of this claim."

It would appear difficult for anyone to fail to comply with the relatively simple and straightforward instruction quoted above. Both the Carrier and the Organization have managed to do this, primarily by failing to communicate effectively with one another on the property. It is our observation that a mature and effective collective bargaining relationship ought to be able to cope with a simple matter such as this.

The Carrier in its memorandum accompanying the medical report objects to the Board having failed to cede to the neutral physician and his medical judgment the ultimate determination of this matter. We should like to make it clear that we have no right or desire to cede our prerogatives and authority to a neutral physician or anyone else (See Award 4692 and 4693).

The neutral physician, in his report dated July 30, 1973, stated:

"I had the pleasure of examining Mrs. Pauline Hicks on July 27, 1973.

I can find no evidence of significant physical or mental aberration at this time that would preclude her returning to full employment.

Please see enclosed general medical report."

Based on the medical report quoted above we find that Mrs. Hicks is physically qualified to return to work. However, since the parties through the neutral doctor have not expressed themselves as to the physical qualification of Mrs. Hicks to return to work as of October 19, 1970, we are unable to determine if she was physically able to return to work as of that date. We therefore restore her to service with pay to commence on September 1, 1973. (See 3rd Division Awards 16585 and 16316 and 2nd Division Award 5856).

A W A R D

Claim sustained; Claimant will be restored to service with pay to commence September 1, 1973; all other rights will be unimpaired; no interest will be paid.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of October, 1973.