

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Carman L. W. Mullins was denied the right to work from June 1, 1972 until September 18, 1972 inclusive. Carman L. W. Mullins was unjustly disqualified by the Frisco Railroad's Chief Surgeon, Dr. V. W. Holle.
2. That accordingly the St. Louis-San Francisco Railway Company be ordered to compensate the aforementioned Carman for all time lost for all his regular assigned work days between the period of June 1, 1972 and September 18, 1972 plus six per cent (6%) interest.

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.

We have before us a record that can only be described as most confusing. The Claim charges that Claimant was "denied the right to work from June 1, 1972 until September 18, 1972" and implies that this was due to disqualification by Carrier's Chief Surgeon. The fact is that the Chief Surgeon, on June 1, 1972, authorized restoration of Claimant to work under certain restrictions. Petitioner alleges that Claimant was furloughed in a reduction of force in June, 1970. A medical report submitted by it as Exhibit Q, appended to Employees' Submission, records that Claimant performed service for Carrier up to and including August 20, 1970.

Carrier does clear the air somewhat when in its Submission it states, "Claimant ... had been given a leave of absence account sickness August 20, 1970 and subsequently furloughed, ..."

Although Claimant was in furlough status, he placed himself under the care of a doctor described by Carrier as his "personal physician" and Petitioner as "Carrier's doctor". In any event, the medical practitioner involved, commencing early in September, 1970, made application in Claimant's behalf to Carrier's Chief Surgeon for a leave of absence and set forth therein that Claimant was suffering from pneumonia and arthritis. At the end of that month the Chief Surgeon requested a complete medical report which was furnished in mid-October, 1970. Subsequent reports on Claimant's physical condition were rendered by the local doctor to the Chief Surgeon during the winter of 1971. Based upon these communications the Chief Surgeon recommended that Claimant apply for disability annuity on the ground that he "has been found to be totally and permanently disabled due to medical disability." This suggestion was not followed by Claimant and in fact he secured employment as a police officer in the small town in which he resided.

In March, 1972, Claimant learned that one of the senior Carmen at Carrier's Amory, Mississippi facility was retiring June 1, 1972, creating a vacancy which, based upon his standing on the Carmen's Roster for that installation, he would be entitled to fill. He advised supervision at Amory of his interest in returning to work upon the position becoming available. He was told that he could not be restored to work without approval of Carrier's Chief Surgeon. He submitted himself for a complete physical examination by the physician who had treated him in 1970 and 1971 and authorized a report thereof to be forwarded to Carrier's Chief Surgeon. Upon receipt of same, the Chief Surgeon requested further testing and completion of Carrier's form for medical certification of fitness of an employee to "resume his duties". This was issued on April 25, 1972 setting forth the following "Restrictions, qualifications, etc": "take blood pressure medicine; avoid dusty or polluted areas." The Master Mechanic was authorized to recall Claimant to work provided a position was available which was consistent with the restrictions placed by the examining physician. The Master Mechanic advised that the available work entailed being exposed to dusty conditions "at certain times of the year" and that a "certain amount of polluted air" developed from welding or torch cutting operations in the area where claimant would be working and therefore he was unable to state that a position within the specified restricted limits was available.

On July 19, 1972 an appeal from a denial of claim by local chairman was filed in Claimant's behalf by his Organization in which was set forth a charge of violation of the recall provisions of the Controlling Agreement, a demand for back pay for Claimant "from the time the job was available in Amory, Mississippi, which he had seniority on ... until such time as he is restored to service." Attached

thereto was a medical report from another physician dated June 30, 1972, outlining his findings after a review of Claimant's history and a physical examination. It stated in part that no "abnormalities" were found and that Claimant "is able to carry on any kind of work." Also attached was a chest X-ray report dated July 2, 1972 indicating a finding of "normal" with reference to Claimant, and a Carrier physical certification form in which Claimant's physician stated he was able to resume his duties with safety, etc. as of June 30, 1972. On July 27, Carrier's Chief Surgeon sent to the General Chairman another certification form for completion by Claimant's doctor and return to him. This was done by transmission through the General Chairman on August 21, 1972. The Chief Surgeon then recommended that Claimant be examined by one of three local physicians in behalf of Carrier in a notice to the Master Mechanic dated August 28, 1972. Claimant submitted for a complete physical on September 8, 1972, by the same physician who had treated him in 1970 and 1971 and had rendered the report upon which the Chief Surgeon relied when he set the restrictions on June 1, 1972. As a result of this report, the Chief Surgeon, on September 12, 1972 authorized restoring Claimant to work as a car inspector without restrictions and claimant recommenced service with Carrier on September 18, 1972.

It is well established, and our Awards have consistently sustained the right of Carrier to be assured that its employees, returning from sick leave of absence or furlough, are physically able to perform their job duties without endangering themselves or others. (Awards 3108, 4148, 4244, 4510, 5652, 5856, 5943, 6198, 6233, 6278, 6305, 6310, 6312, 6331, 6363 and 6561.

In the instant case, Carrier had in its records concerning Claimant, a series of reports that he had been suffering from a number of ailments during the two years prior to the time a vacancy arose, which according to his seniority status, he was entitled to fill. It cannot be held, therefore, that Carrier acted improperly when it required a certificate of physical fitness before approving restoration of this Claimant to service. The Chief Surgeon, on June 1, 1972, relying on the certificate issued by the physician who examined Claimant, authorized recall of Claimant provided his duties would not be under conditions contrary to the restrictions recommended in said medical certificate. Until supervision was in receipt of this determination, it could not be expected to consider complying with Rule 27(d) of the Controlling Agreement. The Master Mechanic, in reply to the initial claim, stated that the available position entailed factors which could not be worked by an employee who was limited by physical restrictions from performing the duties called for by the job. Nothing in this record controverts the position of this Supervisor that dusty conditions and polluted air tended to exist in the area where Claimant would be required to work; the conditions declared detrimental to Claimant by the certifying physician.

However, on or about July 21, 1972, Carrier's Chief Surgeon was in receipt of a certificate from a qualified medical practitioner giving claimant what appears to be a "clean bill of health". Instead of promptly ordering a reexamination by a Carrier designated physician, the Chief Surgeon, approximately one week later called for Claimant's doctor to provide the information on Carrier's special form. Upon receipt thereof, the Chief Surgeon then ordered the further physical reexamination which he obviously intended to require on or before July 27, 1972.

In Awards of this and other Divisions of this National Railroad Adjustment Board, it has been stressed that undue and unwarranted delay in ascertaining a returning worker's physical fitness to perform the duties of his job cannot be countenanced. The deprivation of an employee of his livelihood and benefits for a period of time without justification imposes a hardship which he should not be required to bear. (Awards 6278, 6305, 6310, 6312, 6331, 6363, 6561).

It is evident that a clarification of this Claimant's condition could have been secured on or before August 1, 1972; had the Chief Surgeon acted with reasonable and not necessarily undue haste; and claimant could have been restored to service on or before that date. He is entitled to made whole for the lost earnings suffered between August 1, 1972 and September 18, 1972, less any amounts earned by Claimant in other employment during said period. The determination of the amount Claimant would have earned in Carrier's employ shall be that earned or would have been earned by the employee who occupied his place on the Carrier's Amory, Mississippi Carmen Roster during that period if he had worked all assignments he was scheduled for during that time.

This Board has dealt at length in numerous Awards with the demand for interest in conjunction with wage losses sustained by employees due to noncompliance by Carriers with Rules and Standards. No useful purpose would be served in restating the concepts which are the basis for denial of this requested relief, and we are adhering to those principles in denying same herein.

A W A R D

1. Claim sustained to the extent set forth in the Findings.
2. Claim sustained to the extent set forth in the Findings for the period August 1, 1972 and September 18, 1972, the claim for interest being denied.

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Award No. 6758
Docket No. 6608
2-SLSF-CM-'74

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 31st day of July, 1974.

