

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employees:

1. That Carman Henry R. Gourdin, hereinafter referred to as Claimant, was improperly withheld from service for three (3) working days, August 7, 8, and 9, 1972, in violation of Agreement Rule 35 and the Medical Disqualification Appeal Procedures.
2. That the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the Carrier, ordered to compensate Claimant eight (8) hours pay at the pro rata rate for each of the above three (3) dates.

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.

The facts giving rise to the instant claim are not in dispute. On August 1, 1972 claimant advised Car Foreman Vodacek that he had an upset stomach and wished to go home. General Foreman Reed refused to allow him to go home. Rather, he sent him to the hospital where he was examined by one of Carrier's physicians, Dr. Mall. Dr. Mall advised claimant that his blood pressure was high and that he should see his personal physician, but he nonetheless approved him to return to work. Claimant saw Dr. Morrison, his personal physician, who found his blood pressure normal, but advised him to take the rest of the week off since he was not feeling well. Claimant did so and returned to work on August 7, 1972. He was not allowed to return to service, however, until after completing three days of tests on August 7, 8 and 9, 1972.

It is the Organization's position that Carrier was arbitrary and unreasonable in requiring claimant to undergo medical examination for 3 days. It cites Rule 35, the Discipline Rule, and the Medical Disqualification Appeal Procedure Rule as having been violated as a result.

It is no longer subject to question that Carrier has the managerial prerogative to require a physical examination of an employee that it believes to have a physical disqualification. Yet, in exercising this right, Carrier must not act in an arbitrary, discriminatory or unreasonable manner toward said employee. It is our belief that in requiring claimant to undergo 3 days of medical examination upon his return to work, Carrier could not be said to have acted in an arbitrary, discriminatory or unreasonable manner.

The decision of Carrier's Chief Surgeon to require claimant to undergo medical examination was based on sound medical judgment. Claimant had been off work for a week due to illness, and prior to that, on August 1, it had been established that claimant had high blood pressure. Furthermore, Carrier maintains that for a few months prior to this time claimant had demonstrated abnormal physical traits leading his supervisors to conclude that he was ill. The latter was never refuted by the Organization while the claim was being progressed on the property. Based on the foregoing Carrier's Chief Surgeon determined that it would be necessary to withhold claimant from service pending further examination, and when it was determined that his blood pressure had returned to a safe level he was immediately approved for return to service.

Carrier's decision was made in good faith and its actions did not constitute discipline as that term is used in Rule 35. Nor was the Medical Disqualification Appeal Procedures violated since claimant was not disqualified from service. If he had been disqualified following the 3 day examination then those Procedures would be applicable. It is our finding that Carrier did not act in an unreasonable manner toward claimant; it did not act in a dilatory manner; and its actions were in accordance with the managerial discretion vested in it.

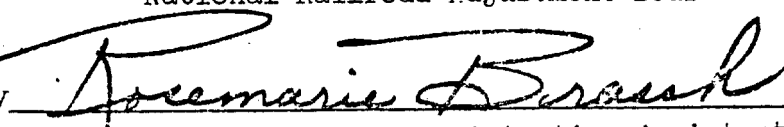
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of April, 1975.