

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7087
Docket No. 6890
2-T&P-EW-'76

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company withheld Electrician A. G. Kelty from active service without just and sufficient cause from December 3, 1973 until February 12, 1974.
2. That, accordingly, the Texas and Pacific Railway Company be ordered to compensate Claimant A. G. Kelty eight (8) hours pro rata pay for each day he was deprived of work, and;
3. That the monetary claim be further adjusted to provide the Claimant with an interest payment computed at a rate of six per cent per annum.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, Mr. A. G. Kelty, a member of the Electrician's Craft employed at the Carrier's diesel facility at Fort Worth, Texas, suffered a myocardial infarction on August 6, 1973. Thereafter, the Claimant underwent heart surgery on October 2, 1973, the nature of the surgery being a synthetic vein graft to correct a circulatory deficiency in his system. On November 25, 1976, Claimant's personal physician, Dr. Brown, authorized the Claimant to return to work as of December 3, 1973; and a copy of his medical records was sent to the Carrier's Chief Medical Officer, Dr. Rouse in St. Louis, Missouri. On November 26, 1973, the Claimant was required by the Carrier to be examined at the Coffey Clinic, and the results of this examination were forwarded to the Carrier's Chief Medical Officer, Doctor Rouse. Dr. Rouse directed the Claimant's local supervision that

the Claimant was not to be permitted to return to active service until six months elapsed from the date of his myocardial infarction. The Claimant was advised to report to the company medical officer on February 6, 1974, and was approved for return to service on February 12, 1974.

The Organization contends that to require an employee who suffers a myocardial infarction to be off a minimum of six calendar months; even though his personal physicians authorized his return to service two months prior to that time, is a violation of the Agreement. The Organization challenges the fairness of the Carrier's requiring one medical standard--a six month out of service policy for all employees suffering myocardial infarctions--to be applicable to all employees. The Organization contends that the Claimant was unjustly treated because he was not informed of the Carrier's six-month policy with regard to myocardial infarctions.

The Carrier has an obligation to all of its employees, including the Claimant, to take reasonable measures to make reasonably certain that an employee is physically capable of performing his duties. We find that the Carrier may set physical standards for its employees. However, the standards must be up to date and reasonable. The physical standard in the instant case, that of a six-month out of service requirement for an electrician who suffered a myocardial infarction requiring an operation two months thereafter (the six months being from the date of the event, rather than the operation), in the judgement of this Board, based on the entire record before us, is clearly a reasonable standard. We find no evidence of bad faith or arbitrary treatment of the Claimant in the application of the policy of the Carrier's Chief Medical Officer to the Claimant, notwithstanding the Claimant's personal physician's contrary opinion. In the instant case, this policy did not violate Rule 21, the Seniority provision of the Agreement nor was the action in effect a constructive suspension in violation of Rule 24-Discipline.

The Organization contends that the Claimant was unjustly treated because he was not informed of the Carrier's six-month policy with regard to myocardial infarctions. The Organization offers no Agreement support for this contention. Nonetheless, it is evident that the Claimant did in fact report to the Company's medical officer on February 6, 1974, exactly six months after his heart problem occurred (see Employees' Exhibit H). He was then examined and returned to service within a week of the examination. The Claimant was told he would not be allowed to return to service until approved by Dr. Rouse's office (see Employees' Exhibit B). His appointment to start this approval process was made for exactly six months. We fail to see this contention as a basis for unjust treatment.

We must deny the claim.

A W A R D

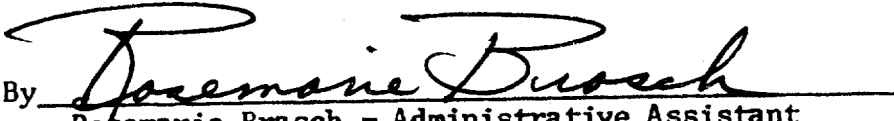
Claim denied.

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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 14th day of July, 1976.