

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated the rights of Carman F. May, Alexandria, Louisiana, when they unjustly withheld him from service from September 24, 1974 to October 13, 1974.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman May in the amount of eight hours (8') per day at pro rata rate, five (5) days per week covering period September 24, 1974 to October 13, 1974.

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.

This is a claim for compensation to Claimant for the period of twenty work days that Claimant was held out of service which is the amount of time it took Claimant to lose twenty (20) pounds of weight as ordered by the Carrier's Chief Medical Officer.

On September 3, 1974, the General Car Foreman informed the Master Mechanic that claimant seemed to be having difficulty in performing his work as a Carman. It was reported from observation that claimant had difficulty rising to his feet from a sitting position without assistance, that he was clumsy and unable to move around freely and, on at least one occasion, unable to perform his task.

At the time of claimant's being held out of service he was 59 years of age, six feet one and one half inches tall, and weighed 263 pounds; Petitioner alleged that claimant had held that weight for the previous 5 years.

Petitioner avers that claimant was singled out for a physical examination and infers that it was an act of reprisal because claimant had assisted in installing a specific brake beam in a car even though later the same day it was found that the foreman had instructed the men to install the wrong brake beam. Claimant was directed to undergo a physical on the following day. Therefore, Petitioner argued that claimant was obviously removed from service for something other than his physical condition "and to proceed in this manner is in violation of the above quoted Rule 32 (a)."

Claimant was initially examined by a company doctor who did advise him at that time that the report of the examination would have to be sent to the carrier's Chief Medical Officer, in St. Louis, before claimant could return to work. It was the Chief Medical Officer who decided that claimant was excessively overweight and recommended that he be withheld from service until he had lost 20 pounds.

Carrier states that this review procedure was specifically approved on the subject System when Second Division Award No. 6704 held:

".....Carrier certainly had the right to require claimant to be examined by a Company medical officer and review of that determination rendered by its Chief Medical Officer."

The record shows that upon his return to service, after having lost the necessary weight, claimant was able to perform his duties in a satisfactory manner.

The Board is not persuaded, by this record, that the claimant was the subject of discipline, as inferred by Petitioner. The record is clear that the Carrier was within its rights to have claimant, or any other employee for that matter, examined by its doctor if, in the judgement of the Carrier, such employee's work pattern evidenced the existent of a physical impairment of some sort. In the subject case, it is an uncontroverted fact that claimant was overweight. In the same vein, there is nothing in the record of the handling of this case that successfully refutes the carrier position that claimant's movements had become restricted while on the job. As previously stated, the loss of weight enabled claimant to perform his duties satisfactorily.

One might speculate that the brake beam incident was the factor causing the action taken by carrier, as did Petitioner, but statements in the record that claimant's physical performance on the job had been under observation for several months prior to the incident were not challenged by the Organization on the property or before the Board. Speculation does not prove the fact!

Petitioner averred that carrier is not obligated to accept the findings of its Chief Medical officer as being determinative of an employee's ability to work in all instances and pointed out that there have been instances where such was the case. We do not dispute this assertion but we do hasten to add that such determinations are within the purview of management prerogatives unless restricted by applicable provisions of an Agreement. On the other hand, it has long been held by this Board that management has the right to accept the recommendation of its Chief Medical Officer. Third Division Award No. 14127 stated on this point:

"Since no rule of the controlling Agreement relates directly or even by fair implication to such matters, Carrier had every right to require the examination in question and to disqualify Claimant, on the advice of its Chief Surgeon....."

Numerous other Awards of this Board adhere to this principle.

For the reasons stated herein we do not find that the action of the Carrier was disciplinary, nor capricious, not violative of the rights of the Claimant and we will, therefore, deny the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1977.