

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

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

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company violated Rule 103 and 100 (old rule 35) when they disqualified Carman Painter Arthur L. Powell without benefit of a physical and/or mental examination and when they continue to refuse to return him to service.
2. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, be ordered to reinstate Carman Painter Arthur L. Powell, hereinafter referred to as Claimant, with all seniority, vacation, and all other rights unimpaired plus eight hours pay at the pro rata rate for each day that he is withheld from service commencing August 2, 1976 until the date of his reinstatement.

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.

On or about July 9, 1976, Claimant's behavior came under suspicion as a result of his open predictions of disaster to various levels of supervision and to himself; citing religious chants, and predicting that "He whosoever shall touch my body will perish from the face of the earth."

On July 12, 1976, Claimant was taken to the United States Steel Dispensary where he was examined prior to being transferred to Methodist Hospital in Gary, Indiana, where he was placed under the care of Dr. Ara K. Yeretsian, Psychiatrist. On date of July 30, 1976, Dr. Yeretsian released Claimant for duty August 2, 1976 with diagnosis of "acute psychosis, etiology undetermined."

Claimant reported for work on August 2, 1976. Carrier refused to permit Claimant to resume work and subsequently secured his authorization to obtain past medical records from the V.A. hospital in which Claimant had previously been confined. Based on Dr. Yeretsian's diagnosis cited above and medical records obtained from the V.A. hospital which indicated herniated discs in lumbar spine, Claimant was notified by letter dated September 28, 1976 that he was medically disqualified from returning to service "predicated on diagnosed disc disease (low back) and demonstrated psychiatric deficiencies."

Carrier defends against the claim, alleging it was untimely filed. We do not agree. Claimant was notified by letter dated September 28, 1976 (hand delivered after October 1, 1978) that he had been found medically disqualified for service. The initial claim was filed by letter dated November 17, 1976, which was well within the 60-day time limit for filing such claim. See Second Division Award No. 7277.

Both parties allege a violation of Rule 103 covering Medical Disqualification Appeal Procedures. We refuse to place such narrow interpretation of the rule under the circumstances prevailing here and will deal with the merits.

We find that as of the date the claim was initiated there was no conflict in the diagnosis of Claimant's mental and physical condition. In fact as late as May 10, 1977, Claimant presented a "verification of private medical care" form which showed "S/P Herniated disc L 4-5." That diagnosis was made by Claimant's own physician.

Based on medical reports as of the claim date of November 17, 1976, we find no basis to support the contention that Claimant was improperly disqualified for service commencing August 3, 1976.

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 6th day of December, 1978.