

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

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That the Southern Pacific Transportation Company dealt unjustly and improperly with Boilermaker Michael T. Brace by failing to afford the request made on his behalf on about July 2, 1976 for a third physical examination to be performed by a neutral physician in determining his physical fitness for re-entry to the service of the Carrier. Accordingly, the Southern Pacific Transportation Company make Michael T. Brace whole by:
- (2) Compensating him eight (8) hours at his pro rata rate of pay for each work day he is improperly held out of service. Further, that the Carrier compensate the Claimant for all losses sustained, if any, caused by the loss of coverage under the Health & Welfare Agreements during the interim he is improperly held out of service.

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 case involves a request by Claimant for a third medical opinion to resolve differences between Claimant's personal physician and Carrier's Chief Medical Officer over Claimant's physical condition to return to work following a furlough.

Claimant's own doctor indicated that Claimant could do heavy physical labor, whereas Carrier's medical officer found that Claimant required surgery before he could re-enter Carrier's service.

The Carrier maintained that a subsequent physical examination confirmed its original diagnosis and, therefore, no diversity in professional opinion existed such as to warrant a neutral doctor's opinion. Moreover, no Agreement rule calls for a neutral physician's examination. Carrier insists that its disqualification of Claimant on physical grounds is consistent with its right to establish and maintain physical standards for its employees, a right this Board has consistently upheld.

The Organization, on the other hand, stresses that the real issue is whether Claimant's alleged ailment disqualifies him from working. It reaffirms its request, first raised on the property, for a physical examination by a doctor not involved with either Carrier or Claimant. As to Carrier's assertions regarding physical standards for its employees, the Organization argues that resort to a neutral physician is not only common in the railroad industry, but that such a neutral could resolve not only differences in professional opinion as to the existence of a physical disability but also differences as to whether an existing physical condition would be dangerous to an employee's health while performing his duties.

Both parties also charged each other with time limit violations regarding filing and responding to claims. Based on the peculiar facts and circumstances involved, we determine that the claim is properly before this Board.

Upon careful consideration of the record, we hereby direct that Carrier shall have its Chief Medical Officer reexamine Claimant as soon as possible to ascertain whether Claimant's physical condition still does not meet Carrier's physical standards. Should such examination disclose that Claimant's condition still disqualifies him from returning to his regular job, the Carrier, nonetheless, is to place Claimant in a job, consistent with his qualifications and experience, in which his physical condition, in terms of the job requirements, will not endanger his health or safety or that of his fellow employees or that of the general public.

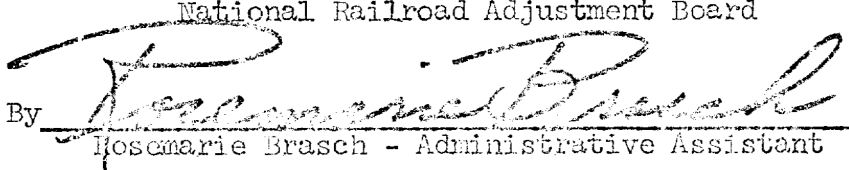
A W A R D

Claim sustained to the extent and in the manner set forth in Findings.

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 4th day of January, 1979.