

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That under the terms of the applicable Agreement the Carrier unjustly suspended Carman Gerald Haire from service from January 28, 1978 to August 5, 1978.
- (2) That accordingly, the Carrier be ordered to compensate Carman Gerald Haire for all of the work days totalling 136 days in this period of suspension.

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. Haire, was removed from service with the Carrier on January 28, 1978 pending review of his medical qualifications to perform on the job. The removal was occasioned by supervisory observation of erratic behavior including disorientation as to location and periods of disappearance. The provisions of Supplement V of the Agreement were utilized by the parties to process this medical problem to its ultimate conclusion which was return to service on August 5, 1978.

The Organization now contends that Claimant was unjustly removed from service on January 28, 1978 and should be paid for time lost as a result of the medical procedure. It points out that there is no specific provision in Supplement V for removal from service.

The pertinent paragraph reads:

"After entering service no employee will be required to submit himself for physical re-examination, except under the following circumstance

"(1) - When, at any time while in service, causes unknown, it is apparent to the representative of the employes or the representative of the Carrier that an employe is becoming unsafe and liable to cause injury to himself or fellow employes or cause liability to the Carrier."

In the case under consideration, the Carrier did determine that grievant was unsafe and liable to cause injury to himself and possibly others. It was necessary that some action be taken. One can readily visualize the liability which might accrue if no action was taken and the Carrier's concerns were realized. Obviously, the purpose of the examination is to determine the employee's fitness for work and some judgment must be made before the employee can be returned to work. Supplement V of the Agreement provides the process through which that determination is to be made and that course was followed. While there is no specific statement that the man can be removed from service the implication that such is the case is strong. It is doubtful that the Organization would ask that a sick man be kept on the job. The Carrier has a strong responsibility to its operations and other employees to assure that the workman is medically capable of performing his duties. We conclude that under the circumstances the Carrier did not violate any rules by removing Claimant from service.

The record reveals that Mr. Haire first saw his own physician who reported that a physical examination revealed no reason why Claimant should not return to work. However, the case under consideration involved emotional or psychological problems. After a discussion with the Company doctor, Claimant's physician concurred that in view of his client's behavior a psychiatric evaluation might be advisable before he returned to work around moving trains.

Claimant was granted a medical leave of absence for the duration of the medical evaluation in accordance with Supplement V.

The psychological testing and evaluation were completed and reviewed by the Carrier Medical Officer on April 7, 1978. That report, which the Carrier accepted, suggested that grievant be returned to work with a proviso that he seek medical assistance for his problem while he continued to work. On April 10, three days after receipt of the evaluation, the Carrier notified Mr. Haire that he would be returned to work if he would agree to continue treatment on the job as outlined by the medical reports. Claimant refused to accept the conditions. Consequently, further provisions of the contract were triggered which required the evaluation of a third physician. For reasons beyond the control of either party, the selection process and acceptance of the assignment by a third doctor consumed some period of time. Eventually the examination by the third doctor was completed and Claimant was returned to service on August 5, 1978.

Medical problems, especially one of the nature here encountered, are beyond the expertise of lay boards and do not lend themselves easily to the grievance process. That is the reason the parties agreed upon Supplement V as a procedure for their resolution. Our review is confined to a determination regarding the application of contractual commitments and their reasonable implementation.

In the case under consideration we have ruled that removal from service under the conditions was reasonable. That removal was shortly changed to a leave of absence in accordance with Supplement V which is designed to handle such matters. The contractual provisions were followed in processing this matter. It is regrettable that the process was time consuming although it is not unusual when dealing with the medical profession. It should be noted that Claimant could have returned to work earlier but chose to follow the contract to its ultimate conclusion.


In view of the foregoing and the entire record we find that the contract was not violated.

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 28th day of January, 1981.