

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad Company has improperly withheld Sheet Metal Worker, Water Service Repairman Pasquale Mennella from service from April 3, 1979, that being date company placed improper and unwarranted permanent physical restrictions on claimant resulting in company not allowing him to return to his former position thus in effect severing the employment relationship improperly, placing company in violation of the current and controlling agreement by their total disregard of principles contained therein.
2. That accordingly, the Illinois Central Gulf Railroad Company be ordered to restore Mr. Mennella (claimant) to service with all seniority and other rights unimpaired.
 - a. Compensate claimant for all time lost in addition to an amount six (6) percent per annum compounded annually on the anniversary date of claim.
 - b. Make the claimant whole for all vacation rights.
 - c. Reimburse the claimant and/or his dependents for all medical and dental expense incurred while employee was improperly held out of service.
 - d. Pay the claimant's estate whatever benefits the claimant has accrued with regard to life insurance for all the time claimant was improperly held out of service.
 - e. Pay claimant for all contractual holidays.
 - f. Pay claimant for all contractual sick days.
 - g. Pay claimant for all contractual bereavement leave.
 - h. Pay claimant for all jury duty and for all other contractual benefits.

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.

The essential facts in this case are as follows: On or about October 25, 1977, Claimant suffered an acute myocardial infarction which necessitated extended medical care and recuperation. His private physician, Dr. Joseph P. Musci, M. D. later submitted a medical note, dated October 25, 1977 which affirmed his medical condition and stated that he would be disabled for an indefinite amount of time. He wrote a subsequent note on January 13, 1978 which reiterated Claimant's physical condition and noted that Claimant could not be able to work for the next 3 months. On April 14, 1978, Dr. R. P. Gotsis, M.D. apprised the Office of Division Engineer that based upon his examination of Claimant that day, Claimant was not able to resume his normal employment activities on April 23, 1978 when his leave of absence expired and that he advised Claimant to remain off work for at least another 4 weeks. On May 18, 1978, Dr. Musci issued a return to work certificate, which included limitations. Claimant was not permitted to lift more than 30 lbs. or engage in strenuous activity.

Claimant was examined by a Carrier physician on May 23, 1978 but was disqualified by the Chief Medical Officer "on account of cardiac status and restricted activity per private doctor". On June 16, 1978, Dr. Musci issued Claimant another return to work certificate with no limitations, but modified this position, when he was requested to complete a statement for the Carrier's chief medical officer. He indicated in this statement, dated July 17, 1978, that Claimant could return to work precluded from lifting objects over 40 lbs. or engaging in strenuous activity. Claimant was examined on July 17, 1978 and again disqualified by the Chief Medical Officer, "on account of cardiac status and restricted activity per private physician". On July 23, 1978, Claimant's doctor notified Carrier that Claimant was still disabled and would be disabled for at least 3 months. This medical prognosis was reaffirmed on October 13, 1978 when Dr. Musci noted that Claimant would be disabled for at least 3 more months. On March 22, 1979, Dr. Musci issued Claimant a return to work certificate which stated that he could return to work on April 3, 1979 with no limitations "as long as he return to his usual job". He issued another return to work certificate, although it was undated, which stated that Claimant could return to work with the proviso "he may resume his usual job". Claimant was then examined by a Carrier physician on April 3, 1979, who qualified him to return to work, but with the following restrictions: "No lifting over 15 lbs., no stairs over 5 steps, no ladders, no company tools over 15 lbs."

On April 4, 1979, Claimant was disqualified by the Chief Medical Officer "on account cardiac status - post heart attack. No restricted work available per supervisor." He reported this finding to Dr. Musci and was referred at his request to another physician, Dr. Luke R. Pascale. On April 25, 1979, Dr. Pascale wrote Dr. Musci the following letter:

"Dear Joe:

I have just seen your patient, Mr. Manella, who presents a story of not having worked for approximately sixteen months following his myocardial infarction. He has no symptoms, and he does a fair amount of strenuous activity involving yard work, shoveling, hoeing, planting, etc. He has gardened four large plots of ground without any problems.

On physical examination his blood pressure is 140/80 with a heart rate of approximately 98. He has a systolic murmur at the apex with a third heart sound. However, the lungs were clear, and there was no sign of congestive heart failure. In reviewing his angiography, we find that he does have significant disease with an aneurysm of the left ventricle.

The answer to the problem of whether he should return to work or not is based on the type of work he does. According to his job function, he does not lift an excessive amount of weight, and there is help readily available at all times if the item needing lifting or support is moderately heavy.

It would seem that the possibility of this man returning to work is real in view of his performance during the last year. However, no one can be totally certain with such a cardiac condition that it would not require his stopping work if he were to develop chest pain or signs of congestive heart failure.

Thank you for referring Mr. Mennella to me.

Sincerely yours,

Luke R. Pascale, M.D."

At this juncture, the Organization's General Chairman became involved in the problem and filed a claim on behalf of Claimant on May 23, 1979. An Organization-initiated proposal to establish a 3 doctor panel to review Claimant's condition was under serious consideration, but was not implemented, since Carrier contended that Dr. Musci's December 6, 1979 return to work certificate, submitted by the General Chairman on January 4, 1980, did not satisfy its November 30, 1979 request for an up to date written physical status report. The November 30, 1979 letter signed by Michael J. Hagan, Manager of Labor Relations and addressed to the General Chairman read in part that:

"I would be willing to apply the attached proposed agreement to Mr. Mennella's case regardless of when the agreement is signed if he is able to furnish Dr. Davison within 30 days from the date you receive this letter, an up-to-date written report from his attending physician attesting to Mr. Mennella's present physical condition being able to meet the company's

physical standards. If such a report is received and you elect below to apply the proposed agreement to his case, the last two sentences of Paragraph 1 and the five remaining subsequent paragraphs will then be put into effect."

The General Chairman informed Carrier that Dr. Musci told him that the Chief Medical Officer, Dr. Thomas H. Davison, M.D. did not furnish him with information relative to Carrier's physical standards or job description of a water service repairman and that Dr. Musci felt that his prior non-restriction statement was "quite adequate". The matter was not further discussed and the claim was referred to the National Railroad Adjustment Board. Carrier furnished the General Chairman a copy of Dr. Davison's memo to M. J. Hagan, Manager of Labor Relations, dated March 3, 1980, which contained a complete quotation of Dr. Davison's progress notes of his conversation with Dr. Musci on September 4, 1979. This quotation is referenced as follows:

"See prior record - patient's private doctor, Dr. Musci was telephoned re his recommendations for patient's physical activity. He reports patient has done well with his cardiac problem and feels he can engage in fairly normal activities, however he feels patient should not be required to lift over 40 lbs. or other strenuous activity. He further states when he released patient 3-29-79 for work, 'No limitations as long as he returned to his usual work' he was accepting patient's description of his job that he did not require heavy lifting over 40 lbs. or strenuous work. Doctor felt on learning of Division Engineer's job description that special consideration should be made by company to restrict duties and that patient denied such necessary activities.

RX. Case discussed with M. Hagan - Labor Relations 9-5-79. To get additional written confirmation of restriction from Dr. Musci - requested 9-6. T.H.D.

As you can see although Dr. Musci was not given a written job description the details of the work were understood by him, were obviously incompatible with what his recommendations were as stated, and that his position was that certain adjustments to these job requirements should be made by the company. Please advise if further information is needed regarding your handling of this case."

The General Chairman subsequently met with the Chief Medical Officer and a company official and a letter was sent by Dr. Davison to Dr. Musci on April 17, 1980, which reviewed the prior exchange of correspondence and requested Dr. Musci to determine whether Claimant could return to the water service repairman's job as described by the job description attached thereto with unrestricted activity. No response was received.

In our review of this case, we concur with Carrier's position. The pivotal question before this Board is whether Claimant can perform all of the duties of a water service repairman and we find that he cannot perform all of the duties. To argue as Claimant does that Dr. Musci's return to work certificates permitting

him to return to work as long as he returns to his usual job, is not enough to overcome Carrier's reservations. We agree with Carrier that careful reading of the medical correspondence indicates that Dr. Musci wasn't fully informed about the full extent of the water service repairman's job and thus rendered his professional judgement on what Claimant had told him. This persuasive inference is confirmed by the Chief Medical Office's telephone conversation with Dr. Musci on September 4, 1979, wherein the latter physician acknowledged that his recommendations were predicated upon Claimant's description of the job. To be sure, we are confident that Claimant could perform many of the duties of the water service repairman, but Carrier is not required by Agreement rule or observable past practice to modify the job to accommodate Claimant's physical condition. This is a unilateral determination which only Carrier can make and we are not empowered by the Agreement to compel otherwise. We have no equity authority. In Second Division Award 4510, we stated in part that:

"We do not detail the findings of the doctors which are contained in the record as submitted to us; suffice it to say that there was sufficient reason for Carrier to accept the recommendations of its Medical Department in keeping Claimant out of service. In the absence of a showing of bad faith or arbitrary or capricious conduct, we will not substitute our judgement for that of the Carrier in these matters. We find no such evidence."


We believe this principle is on point with the facts herein and we will not substitute our judgement for that of Carrier's in the instant matter. This decision does not estop Carrier from restructuring the water service repairman's position and we recommend that Carrier consider some form of job redesign, in view of Claimant's enthusiasm and the therapeutic value of work. Unfortunately, we cannot impose it.

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 3rd day of February, 1982.