

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

Parties to Dispute: (Sheet Metal Workers International Association
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant J. K. Stephens was unjustly withheld from service by Carrier.
- (2) That the Carrier pay claimant 8 hours pay at straight time rate for each and every work day including pay for contractual holidays, pay claimant for all overtime hours accruing to him because of his seniority while wrongfully withheld from service, beginning on the 6th day from the day claimant reported for work with release from his personal physician to return to work, until claimant is returned to service by the Carrier.
- (3) That claimant be made whole for all contractual benefits accruing to him including vacation, life insurance benefits, medical and dental expenses incurred during the time claimant wrongfully withheld from 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 employes 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 December 6, 1981, the Claimant, while off duty, accidentally shot himself in the left leg. Following this accident, a series of events occurred focusing on the status of the Claimant's physical condition and his ability to perform his assigned duties. The Carrier's medical personnel and other physicians who examined the Claimant were involved, and ultimately, it was determined that certain work limitations had to be imposed. Subsequently, the Carrier advised the Claimant that it did not have a position which could accommodate the Claimant's physical restrictions.

The Organization, in its Submission and handling of this dispute, vigorously argues that the Claimant has been unjustly withheld from service for an unnecessarily extended period, which effectively amounts to an employer suspension from service. Furthermore, it maintains that the Carrier's actions were the cause of unduly prolonging and extending the medical evaluation of the Claimant, an action which it believes is contrary to its construction of past awards holding that physical examinations should be conducted within five working days. The Organization also contends that a great number of the Carrier's exhibits now before the Board were not presented or discussed on the property and, therefore, are not properly before it.

The Carrier, for its part, essentially contends that competent medical judgments placed certain physical restrictions upon the Claimant. The Carrier also argues that the time consumed was not a result of planned action on its part. In any event, it contends that it did not have the type of position that could accommodate the Employee's physical constraints.

After having carefully considered all of the issues raised by the parties, the Board has reached a decision in this matter. Each of the Board's conclusions is discussed below.

With respect to the exhibits cited by the Organization's panel member as not being properly before the Board, the arguments presented are persuasive and, accordingly, these materials will not be considered herein.

Turning to the substantive issue, while many of the Organization's arguments are not without considerable merit, and under certain circumstances would lead to a sustaining award, we do not so find on the basis of the facts before us.

There are certainly elements in this dispute which could arguably lead to the conclusion that the Carrier was not overly anxious to have the Claimant return to work, as contended by the Organization. However, such a finding would run counter to the fact that the Claimant had a history of back problems and, therefore, following the gun shot incident, the Carrier had a reasonable basis to request competent medical opinion. Accordingly, it asked the Claimant to obtain a physical examination. There followed examinations by various medical personnel, all of which delayed the decision process. The Board would note that the Claimant cannot absolve himself of contributing to some of the delay, since he failed to appear for two Doctor appointments and, after one of his physicians judged him to be able to return to duty without physical limitations, the Claimant refused to return to service without work activity constraints.

Finally, after considering the very complicated circumstances presented, the Board concludes that the Carrier's actions herein were not an abuse of its authority. This Division has found, as attested to by numerous past awards, a well-established Carrier right to determine the physical abilities of its employees. On the record properly before us, there is no basis to set aside Carrier's conduct.

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Award No. 10207
Docket No. 10127
2-SP-SM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.