

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Kansas City Southern Railway Company
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern Railway Company - Louisiana & Arkansas Railway Company, violated the agreement between the Kansas City Southern Railway Company - Louisiana & Arkansas Railway Company, and the Brotherhood Railway Carmen of the United States and Canada, effective April 1, 1980, and the Railway Labor Act, as amended, when Carman C. W. Williams was withheld from service November 15, 1980.
2. That Carman C. W. Williams be restored to service and paid for all lost wages, commencing on the date of June 22, 1982, crediting each days wages to a calendar date and making him whole for vacation credits, Railroad Retirement benefits, Tavelers, Provident and Aetna insurance benefits and any and all other contractual benefits not specifically mentioned.

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.

This dispute came about after the Claimant passed out while on duty. As a result, he was withheld from service, pending a physical determination by the Carrier's physician. This physician gave the Claimant a B-2 rating, which is defined as: "Has a correctable defect needing immediate attention, and which should be corrected before being employed". The Carrier's Chief Medical Officer then recommended an EEG, CAT Brain Scan, Skull X-Rays, Holter Monitor, 5-Hour Glucose Tolerance, and a Neurological Evaluation. After these tests were completed, the Claimant's Doctor felt it would be safe for him to return to work and so recommended. However, the Carrier's Medical Officer recommended that the Claimant should "not be placed in any dangerous work where he may cause injury to himself or others as a result of a fainting spell".

Following another physical evaluation by the Claimant's Doctor, it was revealed that the Claimant had earlier episodes of syncope, but none had occurred since October 1981, and it was stated that his "present medication included: Dilantin, 100 milligram caps, 3 to 4 times per day".

The Carrier contends that the physical condition of the Claimant makes it possible that he would suffer a "black-out or fainting spell", which could result in serious injury to himself or fellow workers. Accordingly, the Carrier essentially argues that, since the Claimant's job requires him to be in and about moving equipment, his medical problems are such that continued employment was not possible. In this respect, it relies upon the safety standards for the position of Carman which, in pertinent part, require that the person employed in that position "must have no convulsive disorder, treated or untreated". However, the Carrier also noted that the Claimant's situation possibly could be reviewed again, "if he has stabilized and no longer is under such medication" (Dilantin, an anti-convulsant).

The Organization, for its part, does not dispute the Carrier's right to establish physical standards of fitness. However, it argues that, in the case at hand, the Carrier's Medical Officer did not personally examine the Claimant when he reached his decision to disqualify the Claimant. By failing to do so, after he had been released for work by his Doctor, this action "prevented the Claimant's release and arbitrarily disqualified" him for the job of Carman.

A number of procedural issues, including an alleged violation of due process, have also been raised and are a part of the record before the Board.

Certainly, there is no dispute as to the Carrier's basic obligation and right to establish reasonable physical standards for its position. Nor, absent an express rule in the Collective Bargaining Agreement, is there dispute that the Carrier may exercise its discretion when determining Claimant's fitness to return to service, provided there is no abuse of authority on its part.

In the case at hand, the essential issue is whether the Carrier's Chief Medical Officer's determination was "solidly grounded on a medical finding of substantive probative value" (Second Division Award 6207). It is not our role to substitute lay judgment for that of the Carrier's Medical Officer. Moreover, the Board would also recognize that there may be times when the medical information available to the Carrier's physician is of such a nature that a personal physical examination would not be necessary. However, given the record before us and the fact that the Claimant's Doctor on two occasions determined him fit for duty, an increased burden is placed upon the Carrier to, at a minimum, provide a personal examination by its Medical Officer which would provide some evidentiary basis for a medical decision. The Board also notes that a substantial time has passed since the Carrier made its determination. Accordingly, given all of the circumstances before us, we find that the interests of all best would be served to provide the Claimant another opportunity for medical evaluation by his Doctor (if he so desires) and the Carrier's Doctor by personal physical examination.

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Award No. 10289
Docket No. 10137
2-KCS-CM-'85

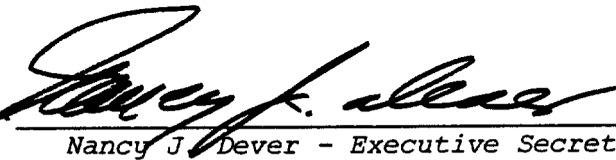
While the Board notes that the parties' Agreement does not provide for the use of a third party with respect to issues as herein, the Carrier is urged to have a third physician examine the Claimant in the event that the medical judgment of the two physicians are not in agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1985.