

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That Jerry W. Ward was unjustly treated by the Carrier when he was denied the right to return to work on March 6, 1984.

2. That accordingly, the Missouri-Kansas-Texas Railroad Company compensate Jerry W. Ward at the pro-rata rate of pay of his position from March 6, 1984 until such time as he is returned to service. Also, he should be made whole for all vacation rights, for all health and welfare and insurance benefits, for pension benefits including Railroad Retirement and Unemployment Insurance, and any other benefits that he would have earned during the time he was held out of service. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 16% per annum compounded annually on the anniversary date of this claim.

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 March 24, 1983, Claimant, a Shop Laborer, took a year leave of absence from work to undergo medical treatment for back problems that eventually necessitated surgery for a herniated disk.

Claimant's employment record indicates there were two instances when he slipped and suffered minor bruises in 1973 and 1974 during his fourteen (14) years of service.

During the leave of absence, Claimant's personal physician furnished a summary of medical history to Carrier in a letter dated July 29, 1983, which described lumbar disk surgery and patient's condition as "unchanged" with respect to recurrent low back pain.

Carrier was first advised by a spine fellow specialist in a letter dated March 6, 1984, received on March 19, 1984, that Claimant could return to work. The letter did not mention any restrictions.

Pursuant to a recommendation by Carrier's Medical Director, Claimant was given a return-to-work physical examination by Carrier's Medical Examiner, which is customary for employees absent ninety (90) days or more for any reason.

The Medical Examiner's Report was reviewed by Carrier's Chief Medical Director, who disapproved Claimant's return to service account "spine defect" and "lumbar laminectomy."

Subsequently, a post-operative recommendation dated April 27, 1984 from an orthopaedic surgeon whom Claimant had consulted since November, 1982, advised Carrier that Claimant "should be able to return to gainful employment without difficulty."

Organization asserts Claimant is able to return to work based on the recommendations of his orthopaedic specialist and surgeon.

Since the two specialists have not indicated any type of spine defect and "only a partial laminectomy" exists, Organization maintains Carrier has arbitrarily denied Claimant his right to return to regular position.

Organization argues that neither specialist would risk Claimant's health or exposure to liability unless Claimant could safely return to work.

The Organization does not dispute Carrier's prerogative to establish reasonable physical requirements for its employees; however, Organization objects to having standards imposed without any indication what they are and how Claimant has failed to meet those standards.

Carrier contends that it considered the medical data provided by Claimant's physicians, but that it has a right to rely on its medical authorities who admittedly took into consideration the nature of Claimant's duties.

Carrier maintains its medical authorities have more expertise regarding application of medical standards required to perform the physical requirements of a Shop Laborer.

The record shows that a Shop Laborer is required to perform a variety of duties inside and outside, including, but not limited to lifting and/or carrying objects with a maximum weight of 65 pounds with occasional lifting up to 100 pounds. In addition, it is uncontested that the nature of the work is considered dangerous as the duties are often performed under conditions in which there is danger to health or bodily injury.

Notwithstanding Organization's contention that Carrier failed to substantiate what medical standards it required Claimant to meet, the Board will not substitute its opinion for Carrier's medical authorities.

The Board notes Carrier followed the proper procedure for determining Claimant's medical fitness in the instant case. The record clearly indicates Carrier's Medical Officers considered heavy lifting an important factor precluding one with a spinal condition from working without serious risk to personal safety.

Prior Awards have held that Carrier is not obligated to accept the opinion of Claimant's physicians without verification by their own doctors. Second Division Awards 10928, 7230; Public Law Board No. 3244, Award No. 2; and Third Division Award 25013.

Absent any specific language in the Agreement limiting Carrier's right to exercise its own discretion to follow the recommendations of its medical authorities, the Board reasons the Carrier did not act in an arbitrary manner to disqualify Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.