

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

Parties to Dispute: ((International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. Under the current Agreement, Mechanical Department Electrician R. H. Metz was unjustly treated when he was removed from service on January 16, 1984, following recommendation of Southern Pacific Chief Medical Officer Dr. J. E. Meyers that Electrician R. H. Metz was medically unable to work at that time. Electrician Metz was not granted a formal hearing pursuant to Rule 39 of the controlling Agreement.

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician R. H. Metz to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages.

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 8, 1983, the Claimant, an Electrician with the Carrier, was required to take a severely injured co-worker to the hospital for treatment. The Claimant became very upset at the hospital, and on December 9 the Claimant could not report due to anxiety and nervousness. On December 22, 1983, the Carrier's Chief Medical Officer, Dr. Meyers, asked Dr. Weingarten to do a complete medical workup on the Claimant. It was completed on January 4, 1984. At the time the attending physician, Dr. Weingarten, determined that

an "evaluation by psychiatrist" would be in order. On January 16, 1984, the Carrier Chief Medical Officer determined, after reviewing Dr. Weingarten's report, that the Claimant was medically unable to work and would be removed from service until such time as he would be cleared by the Chief Medical Officer's office. On January 23, 1984, the Claimant was evaluated by Dr. Daniel Asimus, who is a diplomate of the American Board of Psychiatry & Neurology. The report stated in pertinent part:

"I doubt that he will be able to function adequately at work any longer, and he does require supportive ongoing psychotherapy. Medications are indicated, but I doubt that they will be very helpful for this individual since most of his problems are characterological and long term in nature."

The Claimant was withheld from service and ultimately applied for disability payments.

The Organization claimed violation of Rules 38 and 39, which read as follows:

"38(a). An employee who considers himself unjustly treated, or that his agreement as applicable to his craft is not being properly applied, shall have the right to submit the facts informally to his foreman for adjustment and/or to the nearest duly authorized local committee of his craft. The duly authorized local committee (not to exceed three members of the craft), if they consider it justified, may submit the case informally to the foreman, general foreman, and/or the master mechanic (or the shop foreman to general foreman and/or to shop superintendent in General Shops).

39. No employee shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee shall in writing be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witnesses, and shall have the right to be represented as provided for in Rule 38. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for wage loss, if any, resulting from said suspension or dismissal. Stenographic report of hearing will be taken if requested and employee's representative will be furnished with a copy."

The Organization stated the Claimant has been harassed by the Carrier since 1981. There are personal physician statements which have attested to the Claimant's fitness. The only reason the Claimant filed for disability pay was because of extreme financial difficulty. The Organization stated this is a discipline case and the Claimant has been granted no hearing or a review by a neutral Board of doctors.

The Carrier argued the Claimant's past history prompted a medical review with the precipitating incident being his actions at the hospital on December 8, 1983. The Carrier acted upon medical recommendations by Dr. Weingarten and Dr. Asimus, and there is no competent medical testimony to the contrary. The Carrier claimed this case involves safety and medications, and even the purported return to work notice from the Claimant's doctor placed restrictions on the Claimant. The Carrier noted that on October 26, 1984, the Claimant filed for a Railroad Retirement Board disability annuity and that, as of March 7, 1985, there had been no change in the Claimant's medical status.

Upon complete review of the evidence, the Board finds that the Carrier had probable cause to require the Claimant to submit to appropriate medical examinations. The reports of the two physicians, Drs. Weingarten and Asimus, retained by the Carrier for this purpose, are clear. The Claimant does not appear to be fit for service. The medical releases dated July 31, 1984 and October 8, 1984 by the Claimant's personal physician, Dr. Giesbret, are not given great weight by this Board, as that physician is a family practice physician and not a psychiatrist. With respect to the report from a psychiatrist, Dr. Campbell, it is dated January 28, 1983, approximately one year prior to the incidents of this case. The Board can find no element of discipline in this matter. Therefore, Rules 38 and 39 do not apply. The Board finds that, under the circumstances, the Carrier acted reasonably and with cause and took action based on competent medical testimony. Therefore, the Claim will be denied.

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 1st day of April 1987.