

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rule 28 of the controlling current agreement when on February 6, 1986, Carrier filled four (4) vacancies at Norfolk, Virginia with junior apprentices rather than Apprentice Carman J. D. Cobb.

2. That the Norfolk & Western Railway Company be ordered to give Apprentice Carman J. D. Cobb his rightful position on the Norfolk, Virginia seniority roster and all the benefits he would have incurred beginning February 6, 1986 had he been called and also that Mr. Cobb be paid at the pro rata rate beginning February 6, 1986 for every day that he was not allowed to go to work until April 16, 1986.

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.

The record, as it progressed on the property, demonstrates the following facts. Claimant was furloughed in 1982 and held greater seniority than four other junior employees. In September, 1985, Carrier requested Claimant furnish his medical history particularly with reference to his back problems and two back operations. On February 6, 1986, the junior employees were recalled from furlough. Claim was filed by letter dated February 10, 1986 alleging Carrier's violation of Rule 28 wherein Claimant was not recalled to service in seniority order. As late as April 2, 1986, Carrier lacked any knowledge that Claimant had forwarded his medical records. Claimant's records were thereafter made available and he was qualified to return to duty as of April 16, 1986.

The Organization's Claim on behalf of the Claimant alleges that the Carrier violated his seniority rights by recalling junior employees. The Organization argues that Claimant should have been recalled on February 6, 1986, (which was long after the September 12, 1985, request for medical information) and sent to a doctor for a routine physical, as is the practice on the property. The Organization asserted that the Claimant was in actuality overlooked.

The record herein shows by name, title, date and written entry that the General Foreman talked to Claimant and requested his medical history related to his back problems. There is no evidence in the record, nor rebuttal to the probative evidence provided by the Carrier, indicating that the Claimant was unaware of the request or attempted to comply. In addition, a further letter referencing that conversation was sent to the Claimant on February 4, 1986, just prior to the recall and the instant claim. It was well after this claim was initiated and in progress that Claimant finally submitted his medical records.

This Board finds no violation of the Agreement in these circumstances. Carrier's actions were not arbitrary and a routine physical is not the issue at bar. The Carrier has a right and a responsibility to obtain the medical information necessary to assure the employee's physical ability to safely perform their job. Claimant had been furloughed for a long period of time and the Carrier was aware of two back surgeries. Carrier had the right to request medical records to determine fitness for service before recall.

Based solely on the record, Claimant's failure to respond in September, 1985, and his further delay in February, 1986, resulted in his own failure to return to service. The Board has consistently ruled that when there is a bona fide reason for the request, as there is here, the responsibility rests with the employee to provide the relevant requested medical information. As this was not done, no violation of Rule 28 can be found. Claimant was not qualified physically to return to service (Second Division Awards 11111, 7646; Third Division Award 25195; Public Law Board 4286, Award No. 2).

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 15th day of March 1989.