

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12222
Docket No. 12145
91-2-90-2-287

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the terms and conditions of the controlling Agreement, specifically Rule, 58 when they failed to agree to select a neutral doctor as per our request of March 14, 1990 (Exhibit "CC"). This request was made after Carman J. H. Sevelle had been released to return to work by his doctor (Exhibit "2V) on October 10, 1989 and then disqualified by the Company's Medical Director (Exhibit "BB").

2. That accordingly, the Southern Railway Company now be ordered to provide the following relief. That a neutral doctor now be selected and if the neutral doctor determines that Carman Sevelle was in fact able to return to work on October 12, 1989, that Carman Sevelle be compensated for actual loss of normal earnings during the period for each working day withheld from assignment and that all his other contractual benefits be made whole as of that date.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant was hospitalized with an acute inflammatory liver injury on April 25, 1982, and disqualified from service on June 28, 1982, based on his physician's restriction against possible exposure to toxic chemicals on the job. Claimant did not contest the disqualification.

He attempted to return to work in April of 1987, by presenting medical evidence to the Carrier that his liver functions were normal and that he could return to work without facing additional hazard from chemical exposure. Under the provisions of Rule 58 of the Agreement, a neutral doctor was selected to evaluate Claimant's medical condition. This examination determined

that Claimant was in good health, but that he "should not perform work as a carman nor work in a railroad yard where there is a possibility of exposure to these chemicals."

In the instant case, Claimant again attempted to return to work by presenting Carrier with a hand-written note from his personal physician dated October 12, 1989, which stated "Mr. Jerald Savelle was seen by me on 10/9.89. Liver profile function tests were done and they were normal. I see no reason why he cannot resume full employment on the railroad or any other job." The Carrier's Medical Director subsequently advised Claimant by letter of March 1, 1990 that he remained disqualified for service because "you have been identified as an individual who was susceptible to getting liver toxicity on exposure to toxic chemical."

The Organization then requested the appointment of another neutral doctor under Rule 58, contending that the medical findings of the Carrier's physician and the Claimant's physician were in conflict, and that the physical condition for which he was originally disqualified had improved sufficiently to allow him to work. This request was denied by the Carrier on the grounds that no evidence of an improvement in the condition for which he had been disqualified had been presented.

The Board has given careful consideration to the arguments advanced in this case and has reviewed all of the medical documents submitted. It is clear to the Board that Claimant has not come forward with convincing, objective medical evidence of any change in the condition for which he was originally disqualified.

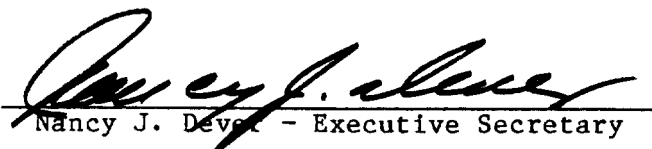
There has never been a dispute about whether the Claimant's liver functions were normal; his disqualification has consistently been based on his identified susceptibility to liver toxicity following exposure to toxic chemicals. The note from his personal physician does not address this condition, and we find that it is therefore insufficient to trigger the provisions of Rule 58. Accordingly, the Claim must fail.

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 18th day of December 1991.