

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 34, when they arbitrarily withheld Carman Charles Dosser from service beginning February 19, 1990 without benefit of investigation to determine all the facts account his being released by his own physicians and Carrier's medical department to return to work on that date without any restrictions.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to compensate Carman Dosser in the amount of eight (8) hours per day, five (5) days per week, at the prevailing carmen's rate beginning February 19, 1990 until returned to service.

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.

Claimant was initially employed as a Carman by the Carrier on June 22, 1944. In April 1973, Claimant was involved in an off-duty accident and was unable to return to service. He was declared permanently disabled and began receiving a disability annuity from the Railroad Retirement Board on July 3, 1974.

For a period of approximately seventeen years there was no contact between the Claimant and the Carrier. In a letter dated January 20, 1990, the Claimant indicated he was physically able to return to his Carman position. Claimant subsequently was examined by Carrier's doctors and found fit to work as a Carman. Claimant was not allowed to return to service because Carrier's Chief Medical Officer wanted to get additional information from the Railroad Retirement Board concerning the Claimant's permanent disability. It was then discovered that the Claimant had not received any disability annuity payments since November 16, 1984. The Carrier requested Claimant to furnish documentation regarding his current status with the Railroad Retirement Board. The Claimant did not comply with Carrier's request. The Carrier endeavored to get additional information from the Railroad Retirement Board but it advised it was limited as to information it could release and could only tell the Carrier that Claimant's benefits were eliminated in November 1984.

Carrier accused the Claimant of being employed elsewhere after his disability annuity ended in 1984. Claimant refused to divulge what he was doing between November 1984, and January 20, 1990, a period of approximately five years.

Following Carrier's refusal to return Claimant to service he submitted a claim which has been progressed to this Board.

Rule 18 of the Agreement reads in part, as follows:

"Unlimited leave of absence will be granted in case of sickness ****

An employee absent on leave who engages in other employment will lose his seniority unless special provisions shall have been made therefor by the Manager of Personnel and General Chairman representing his craft."

The Carrier argues that Rule 18 obligates the employee to notify the Carrier and return to service when the physical disability no longer exists. That inasmuch as the Claimant was removed from disability retirement in November 1984 it was incumbent upon the Claimant to provide the information requested by the Carrier.

The Organization's main argument in this case is that Claimant should not have been withheld from service without the benefit of an Investigation pursuant to Rule 34.

Claimant was removed from his disability status in 1984. He then did not make a request to return to service until after five years had elapsed. Under these circumstances, Carrier was well within its rights to request an explanation from the Claimant as to his activities during the five year period.

Rule 18 has held to be self-executing, consequently if it developed that the Claimant was physically fit to return to service prior to January 1990 and failed to do so and engaged in other employment he would have automatically lost his seniority. Other Carmen employees who worked during the five year period in question certainly had the right to expect that the Carrier would endeavor to determine if Claimant's activities during this same period violated Rule 18. Carrier attempted to fulfill its responsibilities in this respect.

Rule 34, cited by the Organization is a discipline Rule. Under the circumstances prevailing in this case Carrier had no basis to bring this Rule into play.

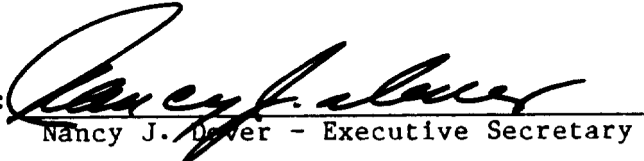
We have been furnished no information as to Claimant's current status with the Carrier. A statement was made that Claimant went on Social Security in February 1991. If Claimant still holds seniority and desires to return to Carrier's service and provides an explanation of his activities subsequent to November 1984 that is satisfactory to the Carrier he should be returned to service, provided he is physically fit, but without any compensation.

It is our conclusion that Carrier's action of withholding Claimant from service in this case was proper and that there is no sound basis for awarding Claimant compensation in this case.

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 19th day of February 1992.