

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12499
Docket No. 12419
93-2-91-2-220

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles 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 Rules 32 and 34, when they arbitrarily withheld Carman V. L. Newton from service beginning September 17, 1989, without benefit of investigation to determine all the facts account his being release by his own physician to return to work.

2. That accordingly, the Southern Pacific Transportation Company (Eastern Lines) be ordered to reinstate Carman Newton to service with seniority rights, vacation rights, coverage under health and welfare, life insurance and other benefits that are a condition of unimpaired employment."

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 employe 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 January 1, 1989, the Railroad Retirement Board approved the Claimant's application for Railroad Retirement Benefits. On September 17, 1989, the Claimant submitted an asserted "Return to Duty" form dated July 11, 1989, which contained certain physical restrictions. The Carrier refused to honor the request which resulted in the filing of this claim.

On November 30, 1988, Public Law Board No. 3763 issued Award 22 concerning this same Claimant. The Award noted that:

"Medical reports presented in the record show that at the time of the instant claim, Claimant could not perform work duties which required excessive standing, stooping, bending, squatting, working in a flexed position, or the carrying of anything weighing over twenty-five pounds."

The claim was denied:

"...without prejudice to Claimant's right to the full exercise of seniority once he is able to demonstrate that he is physically able to return to full service...." (Emphasis supplied)


The July 11, 1989 medical form contains the identical limitations, verbatim, as cited in Award 22 of PLB 3763. Thus, the matter has been resolved by these same parties in another forum, and there is nothing of record to suggest that this Board should reverse that prior finding, and, of course, the Claimant's medical form clearly contradicts any indication of ability to return to full service.

There is an assertion of a time limit violation. We are of the view that this matter had been finally and conclusively resolved by a prior Public Law Board Award, and the Organization's resubmission to this Board under the same basic factual circumstances was, in essence, an exercise in futility. When a Carrier does not abide by a limit mandate, it certainly does so at its own peril. But here, we are unable to sustain any portion of the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of January 1993.