

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 13078  
Docket No. 12898  
96-2-94-2-44

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen Division,  
( Transportation Communications International  
( Union

PARTIES TO DISPUTE: (Western Fruit Express Company)

STATEMENT OF CLAIM:"DISPUTE: CLAIM OF EMPLOYEES:

1. That the Western Fruit Express Company violated the terms of the current Agreement, and in particular Rule 19 of the contractual Agreement effective July 1, 1945 and revised October 2, 1972, when they arbitrarily withheld Spokane, Washington Carman, J.J. Fiorino, from active service commencing April 6, 1992 through and including December 4, 1992.
2. That, accordingly, the Western Fruit Express Company be ordered to compensate the Claimant, J.J. Fiorino, in the amount of eight (8) hours at the straight time rate for each and every working day he was wrongfully withheld from service during the above mentioned period of time."

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 employee 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 were given due notice of hearing thereon.

Claimant was regularly assigned as a Carman at Carrier's Spokane, Washington car shop facility. On May 28, 1991 Claimant sustained a back injury while on duty, diagnosed as lumbar and cervical strain. Between May and August, 1991, Claimant was assigned to an air brake position that had been modified to accommodate his medical restrictions. On August 2, 1991 while working "light duty", Claimant injured his wrist. Thereafter, due to a caboose reconditioning program and contract work for Greenbrier Rail Car that existed at the time, Carrier was able to provide Claimant light duty assignments within the realm of his physical abilities, and provided him training as a relief inspector/write-up man so that he could fill a vacation vacancy in September, 1991. Claimant worked on "light duty" assignments until December 16, 1991 when he had wrist surgery. During this 7 month period, Carrier also allowed Claimant time off with pay to attend physical therapy and medical appointments.

Claimant was not physically able to return to work until April 6, 1992, when he provided Carrier with a medical release to return on "light duty". Claimant was advised that there were no "light duty" assignments available for him as the programs he had previously worked on had been completed, and that he could not return until he was medically able to assume his full duties as a Carman. It is this determination that is being challenged in this case. Claimant was released to return to work with a "fifty pound lifting restriction on an occasional basis" and assumed his regular position on December 5, 1992.

The Organization contends that Rule 19 requires the Carrier to provide light duty work for Claimant. That Rule reads:

**"Faithful Service**

Employees who have given long and faithful service in the employ of this Company and who have become unable to handle heavy work to advantage, will be given preference of such light work as they are able to handle to extent that such light work is available."

Claimant noted various jobs he felt able to perform during this period in his original grievance form.

The Carrier argues that Rule 19 does not require it to create a light duty position for an employee if one does not exist. It notes that it provided light duty assignments and accommodated Claimant's medical restrictions for 7 months when such work was available, and contends that the Organization failed to sustain its burden of proving that there was light duty work available that Claimant was able to perform.

In its response to the claim, Carrier notes that the jobs identified by Claimant were only parts of various positions, which were already filled by senior employees who had bid into them.

In this case, there is no dispute as to Claimant's medical condition during the relevant period of time, or that he was unable to perform his regular position until December 5, 1992. Neither is there proof that any of the job functions pointed out by Claimant were full positions which were unoccupied or available for him to perform within his medical restrictions. We find that this case is similar to the one decided in Second Division Award 11406, and adopt the following reasoning of the Board as applicable herein.

"This Board has reviewed the evidence in this case, and we find that the Organization has not met its burden of proof that there was a full-time light-duty position available which the Claimant was physically able to handle and which fulfilled the restrictions set forth by the Claimants doctor. The decisions of this Board are clear that the Carrier is not obligated to make a job for an employee who cannot perform the required duties of his regular job. (See Second Division Award 8799). Since the Organization has not pointed to a job which the Claimant could have performed, this Claim must be denied."

Accordingly, this claim is denied. See also Second Division Awards 10255, 11542.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.