

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13262
Docket No. 13071
98-2-95-2-80

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Sheet Metal Workers' International Association
(Southern Pacific Transportation Company
((Eastern Lines)

STATEMENT OF CLAIM:

- "1. That the Southern Pacific Transportation Company (hereinafter referred to as Carrier) violated Rule 32(a), Rule 34, Rule 20 and Rule 42 of Current Controlling Agreement between the Sheet Metal Workers' International Association and the Southern Pacific Transportation Company subsequently revised and amended on April 15, 1967, when they unjustly suspended Sheet Metal Worker P. J. Guadarrama from the service of the Carrier, did not restore Mr. Guadarrama to service after his physician had certified him to do so, failed to provide Mr. Guadarrama with position pending resolution of claim, did not offer employment commensurate with medical stipulations and violated the procedural provisions of Rule 32(a), when designated Carrier official failed to respond to claim within sixty (60) days.
2. (a) That the Carrier restore him to active service with all seniority rights unimpaired;
- (b) Compensate him at the pro rata rate of pay, eight (8) hours per day beginning February 16, 1995, continuing while being held out of service;
- (c) Make his whole for all vacation rights;

- (d) Pay Hospital Association dues or insurance for all time out of service;
- (e) Pay the premium for Group Life Insurance;
- (f) Payment for all holidays;
- (g) Payment for all sick pay;
- (h) Payment for all insurance premiums;
- (i) Payment for all jury duty lost;
- (j) Compensation for all overtime lost;
- (k) Compensation for personal days lost;"

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.

The Organization raises a procedural matter, contending that the Carrier official to whom the claim was addressed "failed to respond" to the claim and arguing that the claim should therefore be sustained as presented. There was no procedural violation. Another Carrier official responded within the 60-day period, and Rule 32(a) does not

require the same official to do so. Support for this conclusion is fully presented in Third Division Award 29590.

The Claimant was subject to a work-related eye injury on June 7, 1993. After a brief period out of work, he returned to duty on or about June 15, 1993. On January 31, 1995, the record shows the Claimant reported to his Supervisor concerning "continued complaints of blurred vision, dizziness and pain." After examination by a Carrier Nurse, it was determined to remove the Claimant from duty, pending additional medical information.

Medical reports from the Claimant's personal physician indicated the Claimant should be limited to an "indoor position" and should be restricted from "climbing on stairs, ladders and [remain at] ground level only." The Carrier advised the Claimant and the Organization that it did not have available for the Claimant a position with these restrictions.

Despite the Organization's contention of violation of Rules 34, 20, and 42, the Board finds the Carrier in conformance with proper procedure and reasonable precaution as to the Claimant's safety.

Rule 34 concerns "Discipline Investigations." The Claimant was not disciplined. Rule 20 involves "Faithful Service." The Claimant has 20 years' service. The Rule, however, simply requires for such employees "preference of such light work in their line as they are able to handle." The Organization offers no convincing evidence of the availability of such work. Rule 42, "Employees Injured", requires that injured employees be permitted to return to work "when able." Under the restrictions of the Claimant's own physician, the Claimant was not "able" to return to his regular duties.

AWARD

Claim denied.

Form 1
Page 4

Award No. 13262
Docket No. 13071
98-2-95-2-80

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 18th day of May 1998.