Award No. 2147
Docket No. 2001
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Electrician T. J. Norwood was unjustly treated when he was not permitted to return to work from the period of December 1, 1954 to February 16, 1955.

2. That accordingly the Carrier be ordered to compensate the aforesaid Electrician for the wage loss suffered by him during the period of December 1, 1954 to February 16, 1955.

EMPLOYES' STATEMENT OF FACTS: On November 18, 1954, Electrician T. J. Norwood, hereinafter referred to as the claimant, requested Mr. S. F. Eastin, foreman, The Pullman Company, Dallas, Texas, to permit the claimant to return to work on December 1, 1954. The claimant also submitted to foreman Eastin a statement from Doctor David E. Krebs, dated November 18, 1954, advising that the claimant was physically able to return to work. A copy of this statement is submitted herewith and identified as Exhibit A.

Foreman Eastin did not permit the claimant to return to work. Under date of December 22, 1954, Committeeman D. T. Williams submitted a claim in behalf of Electrician T. J. Norwood. A copy of this claim is submitted herewith and identified as Exhibit B.

Under date of January 28, 1955, Foreman Eastin rendered a decision. A copy of this decision is submitted herewith and identified as Exhibit C.

Under date of February 21, 1955, the decision was appealed. A copy of this appeal is submitted herewith and identified as Exhibit D.

Under date of April 8, 1955, Mr. Dodds, appeals officer, The Pullman Company, denied this appeal. A copy of this denial is submitted herewith and identified as Exhibit E.

The claimant returned to service on February 16, 1955.

CONCLUSION

In this ex parte submission the company has shown that on January 28, 1955, the company properly informed Norwood that he would be permitted to return to work on or before February 3, 1955. Further, the company has shown that on December 1, 1954, the date the organization claims he should have been returned to work, the company did not have sufficient medical evidence to authorize his release from his retirement status and his return to active duty. Additionally, the company has shown that Norwood arbitrarily absented himself from work during the period February 3-February 16, 1955, on the grounds that he should not be required to take periodical medical examinations. Finally, awards of the Second Division support management's position that the company is rightfully entitled to know the extent of an employe's recovery from an incapacitating disease and that if the employe is permitted to return to work his physical condition should be closely watched.

The organization's claim that Electrician Norwood was unjustly treated when he was not permitted to return to work on December 1, 1954, and that he is entitled to time lost during the period December 1, 1954-February 16, 1955, is without merit and should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

Before discussing the factual situation out of which this claim arose, we set forth certain principles which this Division has approved by its awards and which are here controlling.

In the absence of any provision in the parties' effective agreement relating thereto, and none is cited here, when an employe is returning to work from a serious illness the company is entitled to ascertain the extent of his recovery and the possibility of recurring attacks thereof as protection to the employe, his fellow employes and the company. See Awards of this Division Nos. 481, 548, 998, 1134 and 1397.

When there is a difference of opinion between two doctors, one for the employe and the other for the company, and there is no evidence of bad faith on the part of either, then there is no basis for our determining which doctor is right and we cannot say the company acted arbitrarily or unjustly, which is the basis for allowing such claims. See Awards 472, 1288, and 1397 of this Division. In such a situation, when the parties cannot agree, the matter should be submitted to a third doctor and his findings followed. See Awards 481, 722 and 1288 of this Division.

In the exercise of care in such cases the physical condition of such an employe should be closely followed. See Award 1459 of this Division.

In August, 1953 claimant, Electrician T. J. Norwood, applied to the Railroad Retirement Board for disability annuity under the Railroad Retirement Act. This was awarded him effective as of August 29, 1953. On September 16, 1953 he also applied for retirement from the company because of total and permanent disability, which was authorized effective October 1, 1953. The cause of his disability was arteriosclerotic cardiovascular disease with mild to moderate hypertension and angina pectoris on exertion.

On September 16, 1954 claimant's doctor, David E. Krebs, of Lancaster, Texas, wrote to L. W. Berry, the company's superintendent at Dallas, requesting the physical condition of claimant be reviewed by the company's doctors in order to determine if he was able to return to work as he believed he would be able to handle his job properly if he (claimant) continued to take the medicine he (Dr. Krebs) had prescribed. On September 27, 1954 claimant also wrote Superintendent Berry to the effect that he would like to return to work, stating he felt he could do a full day's work without any difficulty. On October 10, 1954 Dr. Krebs wrote Dr. H. J. Mitchell, the company's doctor at Dallas, Texas, advising him of claimant's condition and advising that he thought claimant should be allowed to return to work.

On October 20, 1954 Dr. Mitchell advised Superintendent Berry that in his opinion it would be unwise to return claimant to duty as an electrician. The company also had Dr. R. M. Graham, its Director of Medicine in Chicago, review claimant's record. After doing so it advised claimant his request for return to work as a regular electrician could not be approved.

Thereafter, on November 18, 1954, Dr. Krebs notified S. F. Eastin, the company's foreman at Dallas, Texas, that claimant could return to work on December 1, 1954. On the same day, November 18, 1954, claimant notified Foreman Eastin he would be ready for work on December 1, 1954. Thereafter on December 22, 1954, this claim was submitted to the company.

On January 6, 1955, the company had Dr. Charles N. LaDue, a heart specialist of Dallas, examine claimant. He reported to the company by letter dated January 8, 1955, setting forth his diagnosis with recommendations that:

1. Continued frequent observations be made by claimant's personal physician; and that,

2. Reconsideration of his ability to perform occupation be made at intervals of six months.

Therefore, on January 28, 1955, Foreman Eastin notified D. T. Williams, Chairman Local Union No. 1421, International Brotherhood of Electrical Workers, who had filed the claim on behalf of claimant on December 22, 1954, that claimant could return to work not later than February 3, 1955 on the basis that he would perform all of the regular and customary duties required of a Pullman electrician and continue under the observation and treatment of his doctor and submit himself to physical examination by the company doctors periodically. On this basis claimant returned to work on February 16, 1955.

Considering the nature of the condition that caused claimant's disability we think it was only reasonable that the company took the care it did before returning him to work and certainly it was only sensible to make the requirements it did as a condition for doing so, not only in fairness to the claimant but as a matter of safety to his fellow employes and as security to the company. We cannot find that the company acted arbitrarily, unreasonably or unjustly in anything it did. Consequently we must hold the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1956.