

Award No. 5021
Docket No. 4871
2-SAL-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman J. T. Satterfield was unjustly withheld from service on September 8, 1964.

2. That accordingly the Carrier be ordered to restore this employee to service with all seniority rights unimpaired and paid for all time lost retroactive to September 8, 1964 and further that he be compensated for any and all other privileges he would have enjoyed had he not been withheld from service.

EMPLOYEES' STATEMENT OF FACTS: Carman J. T. Satterfield, hereinafter, referred to as the claimant was employed by the Seaboard Air Line Railroad Company, hereinafter referred to as the carrier with a seniority date of June 4, 1947 at Portsmouth, Virginia Shops.

On August 26, 1964 the claimant accompanied by his Local Chairman R. F. Foster, met with the shop superintendent, H. D. Barnes in regards to the claimant being permitted to return to work after having been off since December, 1961 account of being on sick leave and at this time presented to the shop superintendent a statement from Doctor K. H. Howard, examining doctor for the United States Railroad Retirement Board on which he listed certain aspects of his physical condition, stating, in his opinion warrants the claimant employment. The shop superintendent informed the claimant and his local chairman that he wanted a statement from his family physician, stating what he had treated him for since December, 1961.

On September 8, 1964 the claimant and his local chairman and vice local chairman presented to the shop superintendent a statement dated September 4, 1964 from his family physician, William A. Brown, M.D., listing treatments that the claimant had received since December, 1961, and in this statement Dr. Brown also stated, "Mr. Satterfield has fully recovered from all of these conditions and is now able to return to work and perform his regular duties as a Carman."

The record clearly shows the lack of any merit to the claim.

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 employees 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.

The claim is that under the current agreement Carman J. T. Satterfield was unjustly withheld from service on September 8, 1964.

The position of the Employees is that the Claimant is entitled to a job under Rule 27, the seniority rule, and that "the only contractual reasons provided for in the agreement which would authorize the Claimant being withheld from service" by the Carrier are:

"1. Under the provision of Rule 33, and

"2. If the Claimant suffered a serious accident or illness resulting in the inability to perform the duties of a carman."

Rule 33 is the discipline Rule and does not apply to this dispute, which is not a discipline case.

Rule 42 relates to "employees injured while at work," and provides that such employes "shall be permitted to return to work just as soon as they are able to do so **."* But the Claimant was not injured while at work, and Rule 42 is not relevant.

As stated on the property, the Employees' position was "that Rules 18, 19, 27 and 33 have been violated," and that "There is no rule in the controlling agreement to support such arbitrary action of the Shop Superintendent, and gives the Company the right to send any employe to the company's doctor for a reexamination when the employe has been off sick, and is now able and desires to return to work, * * *."

No rule is necessary to give the Carrier the right to send an employe to its doctor for a re-examination under such circumstances, in the absence of any rule by which the Carrier has relinquished the right. Such an examination is entirely reasonable and is not contrary to the Agreement. Nor is Rule 18, 19, 27 or 33 pertinent. Rule 18 pertains to leaves of absence from work because of "sickness or business matters of serious importance," and is not relevant here. Rule 19 provides that an employee unavoidably kept from work will not be discriminated against; but the refusal to return him to service was not because he had been unavoidably kept from work, but because he was not considered physically able to work. Rule 27 is the seniority rule and does not entitle an employee to be put to work regardless of his physical condition. Rule 33 as above stated is the discipline rule and is inapplicable.

No award is cited by the Employees as persuasive in support of this claim.

Claimant entered the Carrier's service on February 18, 1943, and worked for it until December, 1961, when he dropped out because of his physical condition. He seems to be accident-and injury-prone, having had fourteen accidental injuries during those eighteen years; during sixteen of the thirty-two months between December, 1961 and September, 1964, Claimant's physician treated him as follows:

In 1962: February, March and April, for bruises and lacerations; May and June, backache; July, influenza; August, backache; September, sinusitis; October, influenza.

In 1963: January and February, influenza; April, backache and head cold; June, head cold; October, influenza; December, spider bite.

In 1964: June, arthritis of left middle finger.

On April 11, 1963, Claimant asked to return to work, but as he had not worked since December, 1961, when he laid off because of illness, he was referred to the Shop Superintendent to whom he presented a note from his doctor; it stated that Claimant had been under his care the past year, but was now "able to return to work and perform his usual duties." Claimant stated that his doctor had been treating him for his back on account of a chipped disc; for his nerves, for arthritis and rheumatism, and for his head and hearing, which had been injured in a severe and unexplained beating by a stranger, resulting in broken eardrums. When asked if all his ailments had been cured, Claimant said "his back would slip out of place if he bent in certain positions; his nerves were better; his hearing comes and goes—at times he hears normally, then again he cannot hear; and that his arthritis and rheumatism bothered him mostly in bad weather." Claimant had difficulty in hearing during this interview. He was sent to the Carrier's doctor and returned with the doctor's report which said: "Rejected, subject to final decision of chief surgeon," and stated that the doctor had told him to go home and lie down. The Carrier's doctor reported to the chief surgeon on April 11, 1963 as follows:

"At this time Mr. Satterfield seems to be in a state of confusion. He does not know the day, month, or year, who the President is, etc. He states that he has to keep someone of his family with him at all times because he gets lost. He further states he has to take 'a box of Anacin' daily for his chronic, severe headaches.

"There is also a long history of chronic, low back pain. At present any bending, sitting or lifting causes marked pain."

Claimant then applied to the Railroad Retirement Board for a disability annuity, but it was refused because he was not found to be permanently disabled for all types of regular employment. His disability was diagnosed by the Board's doctor as "chronic, low back pain with probable lumbo-sacral arthritis and hearing deficit," which were "not of such severity that normal types of regular employment would be precluded." This confirmed the findings of the Carrier's medical staff concerning Claimant's disabilities and did not find him fit for carmen service. On December 19, 1963, the General Chairman withdrew the claim from further consideration.

On August 26, 1964, Claimant and his local Chairman again asked for his reinstatement and presented a letter from his doctor stating:

"He has had all teeth removed, his vision in right eye was 20-50, left eye 20-40. He has some deficiency in hearing in right ear but can hear ordinary conversation. His blood pressure was 140 over 70, hemoglobin 12.45 grams and his physical condition, in my opinion, warrants his employment and I have found nothing in his responses to imply any mental deficiency."

Again on September 18, 1964 Claimant submitted a letter from his doctor stating the causes for which he had been treated as above noted during the period between December, 1961, and September, 1964, and concluding as follows:

"Mr. Satterfield has fully recovered from all of these conditions and is now able to return to work and perform his regular duties as a carman."

The Mechanical Officer and Director of Personnel both rejected Claimant's reinstatement and referred to his chronic back ailment and his defective hearing and eyesight, in view of which they did not accept his doctor's statements that Claimant had fully recovered from all the conditions for which he had been treated.

Nearly four months later a doctor examined Claimant and reported:

"This is to certify that I have examined Mr. J. T. Satterfield, Jr., and I do not think he is physically able to work outside and be exposed to all kinds of weather."

Claimant's situation appeals to our sympathy; but we cannot conclude that the Carrier violated the Agreement or Claimant's seniority rights by not restoring him to service. As this Board has often held, the Carrier's responsibility to its employees as well as the public requires it to determine its employees fitness for duty when the question arises.

Neither Claimant's doctor nor this Board is authorized to overrule the decision of the Carrier's Medical staff and management as to Claimant's fitness for service, in view of the chronic nature and long persistence of Claimant's disabilities, and in the absence from the record of any showing of bad faith, reprisal, or arbitrary, capricious or discriminatory treatment. (See Awards 3749, 4148, 4158, 4244, 4324, 4510 and 4700).

The claim must therefore be denied.

However, the Division recommends that Claimant be re-examined as soon as possible by the Carrier's medical staff to determine whether he is now physically able to resume work.

AWARD

Claim denied, but re-examination recommended for the purpose stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1967.

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