Award No. 5652
Docket No. 5566
2-GN-EW-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current agreement, the Carrier unjustly withheld Electrician Fred Hatcher from service on July 20, 21, 22, 23, 24, 27, 28, 29, 30, 31 and August 3, 1966.

2. That accordingly, the Carrier be ordered to compensate the aforementioned Electrician at the pro rata for all time lost during the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: Electrician Fred Hatcher, hereinafter referred to as the Claimant, was regularly employed by the Great Northern Railway Company, hereinafter referred to as the Carrier, at Carrier's Minneapolis, Minnesota Passenger Station at the time this dispute arose. The Claimant subsequently resigned from Carrier service on October 30, 1966 to apply for retirement pension pursuant to the Railroad Retirement Act.

The Carrier instructed the Claimant to report to Dr. Ernest Anderson at Minneapolis, Minnesota, for a physical re-examination on July 19, 1966. Dr. Anderson, one of Carrier's examining physicians but not its chief surgeon, disqualified Claimant for service on account of an alleged enlarged heart and a pulse deficit, allegedly so severe that the pulse beat could not be detected at the wrist. Based on the medical report made by Dr. Anderson, Carrier's Chief Medical Officer certified that Claimant was physically unfit for service.

When Dr. Anderson examined and disqualified the Claimant on July 19, 1966, he suggested that the Claimant undergo examination and treatment by his personal physician. The Claimant was examined by Dr. Jurdy at St. Mary's Hospital, Minneapolis, Minnesota, on July 25, 1966. This disinterested physician fully examined the Claimant and was unable to establish any disability which would prevent him from performing his duties. Dr. Jurdy stated that the Claimant was in excellent health with normal blood pressure and should be permitted to return to work (Employes' Exhibit A).

The Carrier again instructed the Claimant to report for another physical examination which was performed on August 2, 1966, at St. Paul, Minnesota

tion after three months basis and subject to the glasses and hernia restrictions previously mentioned. The Carrier's Medical Officer notified the Carrier of these findings on August 3, 1966, and the claimant was returned to service on August 4, 1966. A further physical examination of the claimant was not conducted because the claimant resigned from service effective October 31, 1966.

In view of the foregoing, the Carrier is at a loss to understand why the instant claim has been presented to this Board. The evidence shows that the Carrier pursued the only course of action that was reasonable under the circumstances. The claimant was removed from service for his own personal health and well being, as well as his failure to meet the Carrier's physical standards. This removal was based on instructions from qualified medical personnel who examined and reviewed the claimant's physical status. When the Carrier was informed that the claimant's health appeared to warrant his return to service, the claimant was examined and returned to duty as quickly as conditions made possible. The Carrier submits that the claimant was not withheld from service as the result of arbitrary, capricious and discriminatory conduct.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. It is the Carrier's legal duty and responsibility to establish, maintain and enforce minimum physical standards for its employes in the interests of safety.

2. The decision of the Carrier to hold the claimant out of service until such time as he could safely perform the duties of an electrician was based upon competent medical evidence established pursuant to examination and review.

3. The Organiaztion has failed to show that the Carrier withheld the claimant from service because of arbitrary, capricious and discriminatory reasons.

4. The Carrier's conduct was most reasonable under the conditions that prevailed in the instant case.

For the foregoing reasons, the Carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

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.

The record discloses that Claimant, who was 71 years of age, had been required to take periodic physical examinations at 6 month intervals. Carrier

maintains these periodic checkups were because of obesity. Nevertheless, on July 19, 1966, this Claimant reported to one of Carrier's medical examiners for his physical examination. The report of this examination stated that Claimant had an enlarged heart; irregular heart rhythm, and a pulse deficit of 50. Because of these findings, he was not approved for service. On July 25, 1966, Claimant was given a physical examination by his personal physician and his cardiac condition was found to be normal. Upon being advised of the new finding, Carrier arranged to have Claimant re-examined by one of its medical officers who found that Claimant's symptoms had improved and authorized his return to work, which he did, on August 4, 1966.

The Organization contends that Carrier acted unjustly and violated the Agreement when it failed to permit Claimant to return to work on July 20, the day after his physical examination of July 19, by his personal physician.

It has been held many times by this Board that Carriers have the right to withhold employes from service on the basis of medical examinations unless Carrier has not acted in good faith or has acted arbitrarily or capriciously. See Awards 1703 (Wenke), 2147 (Wenke), 3561 (Carey), 4510 (McDonald), and 4700 (Seff).

The first medical report, July 19, 1966, may or may not have been in error as the Organization contends. However, there is no proof of evidence that the findings on that date are inaccurate. It is the opinion of this Board that, based upon the July 19, 1966, findings, Carrier was completely justified in withholding this Claimant from service. In fact, Carrier would have been derelict in its duty if it had returned this Claimant to service without using extreme caution. It is the further opinion of this Board that Carrier acted in good faith and that Claimant was returned to service within a reasonable time.

Having found no basis for this claim it will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1969.

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