

Award No. 6233
Docket No. 6049
2-SP(T&L)-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Texas and Louisiana Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company (T&L Lines) unjustly and erroneously withheld Linesman G. A. Gruener from his former position, to which regularly assigned prior to February 14, 1969.

2. That the Southern Pacific Company (T&L Lines) be ordered to compensate Linesman G. A. Gruener, \$100.00 per month commencing with and including March, 1969, through August, 1969, which represents difference between position held prior to February 14, 1969 and position unjustly assigned.

EMPLOYEES' STATEMENT OF FACTS: Electrician G. A. Gruener, hereinafter referred to as the claimant, was employed by the Southern Pacific Company (T&L Lines), hereinafter referred to as the carrier, as a Linesman on March 13, 1945. On February 13, 1969, at approximately 3:00 P. M., Claimant while on duty and driving company truck, became extremely nauseated, and while attempting to park truck, fainted and struck a telephone pole.

Claimant was removed from scene of accident by an ambulance, and taken to the hospital, where he was checked by hospital doctors. Approximately thirty (30) minutes later, claimant left the hospital, walking across the street to the office of Dr. W. M. Wallis, Carrier Doctor. Dr. Wallis checked claimant's blood pressure, and took a blood sample, after which claimant was released by Dr. Wallis to return to his home.

On February 14, 1969, claimant visited Dr. W. P. Bonin, his family physician, who performed a complete physical examination, which proved to be normal, including a blood pressure reading of 120/70. Dr. Bonin also referred claimant to Dr. Harris Hauser, who performed an EEG on February 17,

For the reasons hereinabove shown, the contention of the Organization that the claimant should be paid \$100.00 per month during the period he was restricted is without merit, and the Carrier's action in restricting this employe from driving a company vehicle, which might have been a hazard to himself, as well as the travelling public, should be sustained because of his known physical condition which is, of course, no fault of the Carrier.

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.

On February 13, 1969, Claimant passed out while on duty driving Carrier's truck and struck a telephone pole. He was examined by Company Doctor, W. M. Wallis, at a hospital and released that day. Claimant was examined by his own personal physician, W. P. Bonin, M.D., on February 14, 1969. An electroencephalogram was performed on Claimant by Dr. Harris Hauser, a neurologist, on February 17, 1969. Claimant was again examined by Dr. Wallis on February 24, 1969.

By letter dated March 10, 1969, addressed to Carrier's Joe Foster, Company physician, J. R. Gandy, M.D., stated that he called Dr. Bonin in regard to Claimant returning to duty in his former occupation, and that Dr. Bonin agreed with his conclusion of restricting Claimant from driving a Company vehicle due to past history of blackouts and because of the convulsive history in Claimant's case. Dr. Gandy further stated in said letter that Dr. Bonin told him that he had not known of Claimant's duties. Dr. Gandy concluded said letter by stating that he was still of the opinion that Claimant be restricted from driving a Company vehicle because of the hazards involved.

Again, by letter dated April 1, 1969, Dr. Gandy advised Carrier's Dr. Joe Foster that he was still of the opinion that Claimant be restricted from driving a Company vehicle because of the hazard involved, and again iterated Dr. Bonin's concurrence that the restriction is proper. Once again, by letter dated April 1, 1969, Dr. Gandy wrote to Dr. Bonin in regard to discussing Claimant's case with him on the telephone, and advised Dr. Bonin that he had no alternative but to restrict Claimant from driving a Company vehicle due to the history of the case, namely, three episodes of convulsive type seizures in the past 6-7 years, history of convulsive seizures in the family, and history of seizure he had the last time. Dr. Gandy concluded said letter to Dr. Bonin by stating his appreciation for Dr. Bonin's concurrence in said decision.

On July 22, 1969, Dr. Bonin addressed a letter to Claimant in which he concluded that he had not found any reason to limit Claimant's activity in any way. On August 18, 1969, Dr. Gandy directed a letter to Carrier's Manager of Personnel, J. D. Davis, in which Dr. Gandy stated:

"It is obvious Dr. Bonin would not change his opinion, and he stated that Lineman Gruener was on medication which should prevent any further episode."

Dr. Gandy concluded in said letter to Mr. Davis that in view of the aforesaid circumstances, the restriction imposed on Claimant in regard to driving a Company automobile be lifted.

The Organization's position is that the burden is on Carrier to prove a physical disqualification by substantial material and relevant evidence of probative value, requiring sufficient medical evidence to meet said burden; that Claimant's own personal physician, Dr. Bonin, found Claimant, after an EEG performed by Dr. Hauser, to be normal, and concluded that Claimant was able and ready to return to his former occupation; that Drs. Wallis and Gandy premised their conclusions upon the history of Claimant's family rather than on a recitation of clinical procedures requisite to conclusions reached, as was done by Claimant's own physician; that neither Dr. Wallis or Dr. Gandy submitted any medical evidence to sustain their findings; that nothing is contained in the excerpt from Claimant's personal file which would sustain Carrier's allegation of convulsive trouble on March 16, 1964; that the number or frequency of Claimant's accidents has no relation with the issue of restricting Claimant from his former position; that Carrier failed to prove by positive medical evidence that Claimant should have been disqualified from filling his former position.

Carrier's position is that the three doctors, J. R. Gandy, W. M. Wallis and W. P. Bonin, all agree that Claimant had a history of epileptiform seizures; that the medicine (1½ grains Dilantin) that was prescribed by his family physician, Dr. Bonin, is a drug that is specifically for treatment of chronic convulsive disorders; that Carrier not only had the right but the duty to withhold Claimant from the position in question, not alone for his safety, but for the safety of others; that under the decisions of the National Railroad Adjustment Board, Carrier could have terminated Claimant's employment.

The sole issue to be determined in this dispute is whether or not Carrier treated Claimant fairly and exercised good faith when it restricted Claimant from driving a Carrier vehicle commencing March 11, 1969, and, therefore, deprived him of working his former position during the period in question.

Claimant strongly relies on his own doctor's report of February 24, 1969, in which he said Dr. Bonin concluded that it would be perfectly safe for Claimant to return to his former position. Dr. Bonin reached this conclusion, after stating in said report that:

"As you recall his history indicated what could possibly be epileptic equivalent, the first one having occurred in 1940, then again in 1960 and 1963. Each time he is aware that he is developing a feeling of weakness and possibly fainting. Neurological examination failed to reveal any abnormal reflexes or other abnormalities referable to the central nervous system."

Dr. Bonin went on to state in said letter of February 24, 1969, addressed to Dr. William Wallis that:

"It is my opinion that with Dilantin Grains 1½ at bedtime that these episodes will probably not return, because by past experience they recurred only after several years without any medication."

Carrier's W. M. Wallis, M.D., who examined Claimant on the date of the occurrence, submitted a medical report to J. R. Gandy, M.D., Carrier's Medical Director, in which he stated, in part:

"My opinion at this time is that the patient had a petit mal attack of epilepsy, and is likely to have further recurrences at unpredictable times. I do not consider him safe to return to his previous occupation as lineman. The patient states that he has been driving a car by himself out on the jobs and also climbing poles by himself, and I do not think he is safe doing this type of work. I could recommend him for special job placement working with another man who would be doing the driving and climbing the poles instead of the patient."

Thereafter, Dr. Gandy submitted reports to Carrier's Joe Foster, dated March 10, 1969 and April 1, 1969, in which he stated that he had discussed the case with Dr. Bonin and that Dr. Bonin informed him that he had not known of the duties in Claimant's case, but that he did agree from the legal and liability aspect concerning the Carrier and that he agreed with and was in accord with the restriction imposed on Claimant in regard to driving a Carrier vehicle. Dr. Gandy also wrote a letter to Dr. Bonin, dated April 1, 1969, in which he stated he appreciated Dr. Bonin's concurrence in the decision to restrict Claimant from driving a Carrier vehicle.

It was not until August 15, 1969, that Dr. Gandy discussed the matter once again with Dr. Bonin, and was advised by Dr. Bonin that he reversed his original stand, and that it was his opinion (Dr. Bonin's) that Claimant could return to work safely and could carry out his duties as required up to the time he was removed from his regular job, Dr. Bonin stating that with Claimant on medication, it should prevent any further episode.

We believe in this instance that Carrier acted in good faith when it temporarily restricted Claimant from operating a Carrier vehicle during the period in question. Claimant's history showed that he had had three previous episodes which his own doctor stated could possibly be epileptic equivalent. Further, Carrier had the right to rely on Dr. Gandy's report that Dr. Bonin concurred in the restriction placed on Claimant's driving a Carrier vehicle, in the absence of any evidence to the contrary. Claimant offered no evidence that would rebut Dr. Gandy's statement in this regard.

It wasn't until August 15, 1969, that Dr. Gandy was advised by Dr. Bonin that he felt Claimant could return to performing all the duties of his former position. Shortly thereafter, Dr. Gandy advised Carrier that Claimant could perform without restriction the duties of his former position.

Carrier has not only the right but the duty to take necessary precautions in insuring that an employe is physically able to perform his job duties without endangering the employe's life as well as the lives of others. Finding that Carrier did not act in bad faith when it restricted Claimant from driving a Carrier vehicle during the period in question, we must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1971.

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