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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6539
Docket No. 6378
2-SCL-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute:

- (System Federation No. 42, Railway Employees'
- (Department, A. F. of L. - C. I. O.
- ((Carmen)
- (Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

1. That under the current agreement Coach Cleaner, Pauline E. Hicks was unjustly dealt with when she was denied the right to return to the service on October 19, 1970, and subsequent thereto.
2. That accordingly, the Carrier be ordered to restore the aforementioned Coach Cleaner to service and compensate her for all time lost since October 19, 1970, plus 6% per annum until she is restored to her rightful position, with vacation, health and welfare and life insurance rights unimpaired.

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.

Claimant had been employed by the Pullman Company with a seniority date of 1946. While in Pullman service she suffered a personal injury in 1963 which caused her to lose time. She did return to her job as a Coach Cleaner, full time. Effective August 1, 1969, pursuant to an agreement reached with the Organization, and after discontinuing its relationship with the Pullman Company, Carrier transferred certain former Pullman employees including Claimant to its employ.

On February 6, 1970 Claimant marked off sick and continued in this status until September 1, 1970 when she reported to work and presented a statement from her personal physician dated September 1, 1970, which read as follows:

"To Whom It May Concern:

I have been treating Mrs. Pauline Hicks from January 17, 1970 through August 31, 1970 for extreme nervous reaction.

As of this date I have discharged her, and she is able to return to work"

She was not permitted to return to work and was asked to obtain more complete information from her personal physician., which she did, dated Oct. 14, 1970 reading in pertinent part as follows:

"The above named patient has been a patient of mine for various illnesses since 1965.

On January 13, 1970 she was seen in the office with complaint of nervous anxiety and emotional upset aggravated by her essential hypertension. She has been seen in the office by me every two to three weeks for this condition, and treated with tranquilizers sedatives and anti-tensives.

It was felt that work would aggravate these conditions, however I now feel she is able to return to work. I also feel that placid conditions and tranquility should be more conducive to her health, and I sincerely hope she can work under these conditions"

On October 21, 1970, at Carrier's request, Claimant was examined by Dr. Richardson, Carrier's local physician. On October 30, 1970 Carrier's Chief Medical Officer advised Claimant:

"I have received form MED-2 report of physical examination performed by Dr. P. M. Richardson, together with report from your personal physician, Dr. LaVerne T. Burns, in regard to your request to return to duty following an absence from February 14, 1970 due to personal illness. As a result of these reports, I am very sorry to inform you that you are medically disqualified for further service with the railroad on the basis on your history of right shoulder and arm injury incurred while employed by the Pullman Company in 1961 and your inability to satisfactorily perform the duties required of your job as a Coach Cleaner as demonstrated by your record"

Unequivocally Carrier stated that Claimant was being held out of service because of medical disqualification; no other reasons are given. However, Dr. Richardson subsequently executed an affidavit wherein, among other things, he stated:

"While there may not be any actual physical impairment preventing Mrs. Hicks from performing her duties as Coach Cleaner, I am satisfied that her conviction that she cannot work in a suitable or acceptable manner serves as a bar to her returning to work and fulfilling her duties."

Although physicians on occasion may exceed the bounds of medical diagnosis in dealing with problems, this Board makes no pretense at being able either to resolve a conflict in technical medical testimony, or to diagnose emotional problems. It is generally recognized that Carrier has the prerogative to determine the physical or medical qualifications of its employees; however, such determinations should be based on reasonable medical certainty. (See Third Division Award 16316) The instant case presents both conflict and contradictions in the medical evidence. For this reason we find that there is need for additional medical data to determine the physical fitness of Claimant to return to work. Therefore, we direct that Carrier and Claimant (or her representative) select a neutral third doctor for the purpose of examining Claimant, and that the Carrier's physician, Claimant's personal physician and the neutral doctor present a written report to this Division of the Board, within sixty (60) days of the date of this Award, stating their conclusions regarding the physical qualification of Claimant for restoration to her job as of October 19, 1970 and at present. The neutral doctor's report need not be concurred in by both of the other doctors. A detailed explanation of the duties of a Coach Cleaner shall also be supplied to the neutral doctor (By Petitioner and Carrier) so that he may properly evaluate the physical fitness of Claimant to perform the job.

Upon receipt and consideration of the medical report directed above, the Board will make its final disposition of this claim.

A W A R D

Claim remanded to the property for additional medical data.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kelleen
Executive Secretary

dated at Chicago, Illinois, this 26th day of June, 1973.