

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

Parties to Dispute:

- (System Federation #2, Railway Employees'
- (Department, A.F.L.-C.I.O.
- ((Carmen)
- (Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That under the current Agreement Carman T. J. Rodriguez is unjustly being held out of service of the Missouri Pacific Railroad Company from May 26, 1974.
2. That accordingly, the Carrier be ordered to reimburse this employee for all time lost from May 26, 1974 until his return to service of the Missouri Pacific Railroad Company.

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 underwent surgery for the replacement of the aortic valve. In January 1974 (after recovering from surgery), he was placed on Coumadin therapy (an anti-coagulant drug) and he requested a return to work. After he was given a required physical examination by a Carrier physician, Claimant was disqualified from further employment by Carrier's Chief Medical Officer, due to the serious nature of the surgery and the continuation of the Coumadin therapy.

Claimant's physician, Leahy, advised Carrier on May 26, 1974, of his recommendation that Claimant be re-employed. Supplemental letters were also submitted to Carrier by a Thoracic and Cardiovascular Surgeon and a Cardiologist, assuring Carrier of Claimant's improved physical health.

We feel that the major crux of this dispute is succinctly stated in the Director of Labor Relations' letter of September 26, 1974:

"There is no disagreement as to claimant's medical condition; however, Carrier's Chief Medical Officer, who is charged with determining finally whether or not employes are qualified to perform service, has found that claimant's medical condition does not permit his return to service."

The Organization asserts that Carrier has unjustly held Claimant out of service, maintaining that three physicians (two of whom are cardiovascular specialists) clearly state that he was qualified to return to work.

Carrier, however, disputes Claimant's position, contending that no violation of the Agreement was raised on the property. The Carrier avers that it assumes significant liability for the actions of its employees and consequently it must have sole authority in making determinations regarding re-employment. Carrier cites the seriousness of the Claimant's condition, and notes that the possibility of hemorrhaging is greatly increased as a result of the Coumadin therapy. This, Carrier states, involves too severe a risk to permit re-employment. It is apparent that Carrier's position herein is consistent with the Guide For Use of Chief Medical Officers in the Application of Medical Standards by Occupational Profile as Recommended by the Committee on Medical Standards and Approved by the Committee of Direction Medical Section - Association of American Railroads, inasmuch as the AAR recommends that Carriers bar from service persons who have valvular prosthesis or who are on Coumadin therapy.

Obviously, a Carrier may not unilaterally adopt arbitrary standards of medical conditions. But, a Carriers' Chief Medical Officer is not precluded from a consideration of AAR recommendations in considering his resolution of a given medical concern.

The employees claim that Carrier has not provided substantial grounds to justify its action. They maintain that Claimant's physicians must have known of the heavy work requirements involved in his work position prior to their recommendations, and they cite, as authority, Award 6716.

Award 6716, according to Carrier, is "a compound of errors" and totally irrelevant to the instant case. That Award involved the ability of an electrician to perform his duties adequately. Here, Carrier does not dispute the Claimant's improved health, but simply maintains that the three doctors' opinions do not justify a waiver of Carrier's medical position, as dictated by Claimant's condition.

Several Awards cited by Carrier reiterate the established principle that Carrier has authority to provide medical standards. This Board is inclined to find that Carrier's position was based upon valid considerations. In the instant case, although a careful scrutiny of the letters from the Claimant's physicians indicate that his health has substantially improved, it also clearly demonstrates that an injury to him would pose a greater risk than to the average man. In this regard, we have considered the May 26, 1976, letter from Claimant's physician:

"Because Luke has a prosthetic valve in his heart, it is necessary for him to take Coumadin to prevent the blood from clotting on the valve. Although this does increase his bleeding tendency and bruising potential, it should not prevent him from working. He could tolerate a minor injury or laceration with little more risk than his fellow workers." (underscoring supplied)

It is well established that this Board is not empowered to impose its own individual opinions, but we must abide the dictates of previous Awards which clearly indicate the paramount right of a Carrier to establish its health standards; which should not be disturbed, absent some showing of arbitrary rules or improper application. Accordingly, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch Wes
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of September, 1976.