Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7288
SECOND DIVISION Docket No. 7055
2-CRR-FO-'77

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

Parties to Dispute: (System Federation No. 44, Railway Employes' Department, A. F. of L. - C. I. O. (Firemen & Oilers)
(Clinchfield Railroad Company

Dispute: Claim of Employes:

1. That under the current Agreement, the Clinchfield Railroad Company improperly and unjustly restricted Forklift Truck Operator A. L. Watson from operating a forklift truck, or other similar equipment from March 13, 1974, through August 30, 1974, both dates inclusive, thereby depriving him of the Forklift Truck Operators' rate of pay he would have otherwise received.

2. That accordingly, the Clinchfield Railroad be ordered to additionally compensate Forklift Truck Operator A. L. Watson for the difference between the Laborers' rate of pay of $4.34 per hour and the Forklift Truck Operators' rate of pay $4.52 per hour, eight (8) hours per day for each of his regular assigned work days, five days per week from March 13, 1974, through August 30, 1974, both dates inclusive.

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, a regularly assigned Forklift Operator, suffered a fainting spell during lunch break on September 12, 1973. This claim seeks pay differential from March 13, 1974 through August 30, 1974; but the events which transpired on and after the September fainting spell are pertinent to our determination of the issue.

Although Claimant's physician released him "for work" in late 1973, Carrier refused a resumption of service. On February 4, 1974, Carrier agreed to a procedure - suggested by Claimant - under which a Neutral Doctor would make a final disposition. However, on March 11, 1974 Carrier advised that

its Chief Surgeon permitted a return to service, as long as Claimant did not operate "... a forklift, the trackmobile, or other similar equipment".

Claimant resumed service on March 13, 1974 at a rate of pay eighteen cents (18¢) per hour less than his regular Forklift Operator's rate.

In August 1974, medical restrictions were removed, and on or about August 30, 1974 Claimant was restored to his regular position.

Throughout the handling of this matter on the property, Claimant repeatedly objected to the fact that Carrier's Chief Surgeon made medical determinations of Claimant's inability to perform any work - and then only an ability to perform restricted work - without the benefit of a personal examination. On the property (March 18, 1975 letter) and in its Submission to this Board, Carrier concedes that there was no such examination. Rather, the Chief Surgeon considered "... Dr. Wofford's report, and previous report from Dr. Hyder..." in formulating his opinion.

Dr. Wofford was Claimant's physician who suggested a return to work. Dr. Hyder submitted his report on September 18, 1973 (6 days after the fainting spell). He listed the prognosis as "Fair", but left blank the portion of the form which sought an opinion as to whether the employee was qualified "to safely protect his assignment".

We find no fault with Carrier's basic contention, and the Awards which it cites in support thereof, that Carrier has a right to determine the physical fitness of its employees and that it may rely upon its medical officer's recommendations in that regard. But, as noted in Award 5847, Carrier, when it holds an employee out of service (or, as in this case, restricts activity) assumes certain risks.

We concur with Award 6207's conclusion that a "... Carrier's judgment to hold an employee out of service needs to be solidly grounded on a medical finding of substantial probative value."

Certainly there may be instances where the medical information available to Carrier's physician is so conclusive of an inability to work that a physical examination would be a totally useless and unnecessary act. But we are restricted to the record before us. Claimant's condition prior to March 13, 1974 is not the subject of this claim. However, on February 4, 1974, Carrier agreed to a procedure under which it agreed to "... schedule an appointment ... with the Chief Surgeon ..." Yet, no appointment was scheduled and instead, a determination of restricted duty was made. Carrier has not invited our attention to any medical information available to Carrier which reasonably suggested that result.

Limited solely, to this record, we find that Carrier's action of placing Claimant on a restricted duty without a medical examination was arbitrary.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of April, 1977.