

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employee:

1. That the Missouri-Kansas-Texas Railroad withheld Electrician Apprentice, Mr. Thomas E. Shields from service without just and sufficient cause.
2. That accordingly the Missouri-Kansas-Texas Railroad be ordered to pay Mr. Thomas E. Shields eight (8) hours each day, five days per week, commencing with July 1, 1975 until such time as he is returned to his former position with this Railroad.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The claimant, an Electrician Apprentice, was employed by the Carrier on June 26, 1973. He sustained an off-duty injury on September 23, 1973, which injury resulted in a mid-leg amputation of his left leg.

Claimant remained out of work until December 20, 1974, at which time he reported to a Carrier doctor for examination. On January 23, 1975, he received a letter from the Carrier's Assistant Vice-President, Mechanical, stating in part:

"Regret to advise results of this physical examination developed you are not qualified to return to the service of the Missouri-Kansas-Texas Railroad account left midleg amputation."

Our review of the record discloses an untimely presentation of the claim which, under our previous decisions and the clear language of Rule 27(b) of the agreement, must be dispositive of this dispute. However, in viewing the merits of the matter, we find that it is uncontroverted that Claimant does, in fact, have a mid-leg amputation of his left leg. It is also uncontroverted that Carrier's Medical Director, after reviewing Claimant's medical history and condition, made a determination that, notwithstanding the fact Claimant wore an artificial limb, such a condition did not meet Carrier's minimum physical standards for Electrician Apprentices. We find this to be a reasonable standard, and, in line with numerous previous decisions of this Board, it is not within our province to alter or disturb reasonable medical standards established by a Carrier. Further, considering there was no dispute between Claimant's physicians and Carrier's Medical Director that Mr. Shields did have an amputated left leg, there is no basis for us to order an examination by a neutral physician to determine Claimant's physical condition.

On February 13, 1975, the Organization wrote to the Manager of Personnel for the Carrier (not the proper officer for filing an initial claim) acknowledging that the claimant "would not be permitted to return to work" because of the leg amputation. On February 20, the Carrier replied, again clearly stating that "it was necessary to disqualify" the claimant "for service with this Company as an Electrician Apprentice". The letter went on to state that the Carrier had investigated, without success, other employment for which the claimant might be qualified.

It was not until May 26, 1975 that the Organization filed a claim on the claimant's behalf with the proper officer of the Carrier. The claim asked for reinstatement as an Electrician Apprentice and included a time claim (to begin at a future date, an issue which need not be further discussed here).

Under the operative Agreement, Rule 27(b) states in part:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same ... within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

Whether the Carrier's letter of January 23, 1975, or the Carrier's further letter of February 20, 1975, is used as a starting point, the claim filed on May 26, 1975, is well beyond the 60-day time limit specified in Rule 27 (b). In the view of the Board, February 20, 1975, is the latest date which can be considered as the "date of the occurrence on which the claim or grievance is based. ..."

The Organization states that the matter is a continuing one, making a claim timely at any point during the claimant's being withheld from return to service. Many past awards have held to the contrary. The claimant and the Organization knew on a specific date that the Carrier had determined that the claimant was disqualified from return to work. While a possible continuing liability may have been running, the disqualification itself was the "occurrence" requiring challenge within the 60-day period. See especially Award No. 6854 (Twomey) and Award No. 6987 (Twomey).

A W A R D

Claim denied and dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of June, 1977.

