

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the Agreement, Carman James M. Coleman, Hayne Shop, Spartanburg, S.C. was improperly disqualified and dismissed from service on October 24, 1975.
2. That accordingly, the Carrier be ordered to have Carman James M. Coleman examined by a neutral doctor in accordance with Rule 58 and if approved to return to service that he be paid for all time lost as provided in the rule.

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, Carman James M. Coleman, was notified by the Carrier on October 24, 1975, that he was disqualified for active service with the Carrier because of epilepsy. The Carrier's minimum medical standards for the position of Carman requires that an epileptic be free of seizures for a period of five years without medication; and the Claimant upon examination by Company Physician Heavrin and review by the Carrier's Chief Surgeon did not, in the Carrier's view, meet the minimum medical standards. Following the Carrier's disqualification letter of October 24, 1975, the Organization's General Chairman wrote the Carrier on November 22, 1975, requesting that a neutral doctor be selected in accordance with Rule 58 of the March 1, 1975 Agreement. The General Chairman attached a statement from the Claimant's personal physician diagnosing the Claimant's condition as epilepsy and advising that it was his medical judgement that the Claimant was able to return to work immediately. The Carrier responded to the General Chairman's request for the selection of a neutral physician under Rule 58 in a phone conversation on February 11, 1976, and a letter dated February 23, 1976,

declining the request since the Carrier's physician and the Claimant's physician both diagnosed Mr. Coleman's condition as epilepsy.

The Organization contends that the Carrier violated Rule 35 of the Agreement in not answering the General Chairman's letter of November 22, 1975 until February 23, 1976, which was beyond the 60-day time limits of Rule 35. We disagree. The General Chairman filed a protest of disqualification under Rule 58. This Rule sets forth the procedures agreed to by the parties for the handling of medical disputes. It is clearly evident that the procedures set forth in Rule 58 are comprehensive and complete. No reference is made to Rule 35 in Rule 58, nor does Rule 35 refer to Rule 58 or protests of disqualification. Rule 58 contains time limits of its own. Rule 58(a) requires that the protest be presented within 30 days. Rule 35(a) requires that all claims or grievances be presented in writing within 60 days. An analysis of the entirety of both rules clearly shows that Rule 35 and Rule 58 have no relation to each other. The parties in writing Rule 58 did not set out a specific time limit for the Director of Labor Relations to respond to the General Chairman's protest. And, the Board is not empowered to write into this rule a time limit from another rule. We will, however, consider whether or not a response was made within a reasonable time. The Organization's contention that the time limits of Rule 35 govern in this matter filed under Rule 58 is rejected.

The Organization contends that under Rule 58 the Claimant was entitled to be examined by a neutral physician, a neurologist, since the Claimant's physician stated he was physically able to work and the Carrier's physician claimed the Claimant was not physically able to work. Rule 58 states in pertinent part:

"(a) The General Chairman may file with the Director of Labor Relations a written protest of the disqualification which shall include a copy of the medical findings of the employee's doctor; such protest shall be submitted within thirty (30) days of notice of such disqualification. Should the medical findings of the employee's doctor conflict with those of the carrier's doctor, the management and the employee shall each select a doctor, notifying each other of the name and address of the doctor selected." (Emphasis added)

The Claimant's physician and the Carrier's physician both agreed that the Claimant had epilepsy. The clear language of Rule 58 provides that a conflict in medical findings must exist as a condition precedent to the selection of a neutral doctor. The medical findings of the Claimant's physician and the Carrier's physician were not in conflict "late onset epilepsy" and "epilepsy". Therefore, we find that the Carrier properly declined the General Chairman's request for a neutral doctor. The Organization in its Rebuttal states that the request for a neutral doctor was not made to test the validity of Carrier's medical standards but made in order to have the Claimant examined by a specialist in the field of

epilepsy to determine whether or not Claimant had epilepsy. Rule 58 is clear that the General Chairman must submit medical findings in conflict with that of the Carrier's before a neutral doctor can be selected. Since the Organization has not done so, it has no Agreement support for a request for a specialist. Indeed, since the report of Dr. Keller, a neurologist, on January 21, 1974, the Claimant lost consciousness while driving his automobile off duty and was involved in an auto accident. While leaving the hospital emergency room he had a grand mal seizure observed by hospital personnel, becoming stiff and falling backwards. He was returned to the hospital where he had another seizure. In view of the Claimant's own physician's findings and the Carrier's physician's findings, the Carrier had no contractual or other obligation to seek another medical opinion as to whether or not the Claimant does in fact have epilepsy.

No basis exists in the record before the Board to find that the Carrier's medical standard requiring that an epileptic be free from seizures for a period of five years without medication is unreasonable given the nature of railroad industry and specifically the nature of the work of a Carman. We have found that no conflict in medical findings existed. We have found that the Carrier's medical standards as they relate to epilepsy are not unreasonable. These standards preclude a carman from rendering active service as such. Therefore, the Claimant's physician's judgement on the Claimant's ability to return to work as a Carman has no contractual standing. We shall deny this claim.

We recommend, however, that the Carrier meet with the General Chairman and the Claimant, and, based on the Claimant's health since the filing of this claim and the needs of the Carrier's attempt to selectively place the Claimant, if possible, where he could serve the Carrier and not risk injury to himself and/or other employees.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of September, 1977.