Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7646
SECOND DIVISION Docket No. 7373
2-MP-EW -'78

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company unjustly held Crane Operator J. H. Ross out of service, from June 9, 1975 and continuous, when he complied with past practice, i.e., submitting from his personal physician a medical release, but Carrier's Chief Medical Officer disqualified him for return to service thereby depriving Mr. J. H. Ross of his contractual rights as a Crane Operator at North Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to join with the employes' and initiate a plan the two (2) physicians agree upon and appoint a neutral physician to examine Mr. J. H. Ross to determine whether or not he is physically able to return to work.

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, Mr. J. H. Ross, was a crane operator in Carrier's Mechanical facilities at North Little Rock with an original seniority date of July 12, 1953. The facts surrounding this dispute are lengthy and many, as we shall briefly set out.

In February of 1972, claimant alleges an injury occurred while on duty. However, he did not make a timely claim with the Carrier's claim department for any rights he might have had under the Federal Employers' Liability Act.

Claimant continued working until August 11, 1972, when he laid off stating he was physically unable to work. In December of 1972, he reported to Carrier advising he desired to return to service. He was then examined by Carrier's Medical Officer at Little Rock on December 20, 1972, and although this examination disclosed Claimant had degenerative disk disease, Carrier's Chief Medical Officer approved his return to service on December 26, 1972. Claimant worked a regular shift on December 26, 1972, but at the end of that shift, stated he was physically unable to work.

Nothing more was heard from Claimant for over two years until January, 1975, when Claimant appeared at Carrier's offices and stated he wished to return to service. Again, he was examined by Carrier's local medical officer at Little Rock on the date of January 22, 1975. This examination disclosed Claimant no longer met Carrier's minimum physical standards, and he was therefore physically disqualified from service.

In June of 1975, Claimant again sought to return to service and reported to Carrier's Medical Officer in North Little Rock on June 27, 1975. During this examination, Carrier's Medical Officer reported that Claimant was unable to lift at all and, by his own admission, he had almost continual low back pain with radiation to his right leg which was so painful that he had to sleep on the floor to obtain relief. On July 3, 1975, Claimant was disqualified for return to service by Carrier's Chief Medical Officer.

The Claimant's case here is appealed to the Board in two separate dockets, Docket 7372, alleging that he should have not been medically disqualified and seeking compensation for all time lost, and Docket 7373, requesting that Carrier agree to appoint a three (3) doctor panel to evaluate Claimant's condition.

Carrier has stated that throughout the handling of this case on the property, they continually advised Claimant that if he wished to pursue his request to return to work, it would be essential that he have his personal physician provide Carrier's Medical Department with a write up outlining his condition and treatment received during the twenty-nine (29) month period from August 11, 1972 to January 22, 1975, the period when Claimant was absent from work voluntarily. The record verifies that throughout the local level handling, Carrier made this request and that notwithstanding the foregoing, the Claimant failed to provide such information. There is in the record a shift, hand written note from a Veteran's Administration Doctor dated June 28, 1976 which simply stated claimant "...had a minor back problem which is well enough to go back to work now," however, our review of the entire record discloses that this note was not made a part of the record while the dispute was being handled on the property and is consequently improperly before us. However, even if we could consider this evidence, we do not think that it meets the request of Carrier's Medical Department and would be sufficient for them to make any evaluation of Claimant's condition. We have long recognized that in cases

such as this, Carrier has a right to obtain complete medical information from an employe's physician concerning the nature of his illness and treatment and that failure to provide this information reulsts in the employe, himself, precluding his return to service. (See First Division Award 17 934 and Second Division Award 7171). The brief note provided by Claimant certainly does not meet the requirements of the information requested by Carrier's Medical Department.

In light of the entire record of this dispute, the Board has concluded that, while it will retain jurisdiction over this case, further data is needed to permit rendering a final determination on the matter, and therefore it is remanding this dispute back to the property solely for the purpose described below.

We direct Claimant, if he still desires to possibly return to Carrier's service, take immediate steps to obtain from his personal physician who treated him during the period of his absence from his assignment from 1972 to 1975, a complete write up outlining his condition and treatment received during the twenty-nine (29) month period from August 11, 1972 to January 22, 1975. This write up should be promptly furnished to Carrier's Medical Department (at the office and location specified by Carrier's Chief Medical Officer) so that Carrier's Medical Department and its Chief Medical Officer can make a final determination, on the basis of this clinical information, as to whether Claimant's condition meets Carrier's minimum physical standards.

This determination by the Carrier should be made as promptly as possible and its final decision then forwarded to the Executive Secretary of the Second Division - National Railroad Adjustment Board for study and consideration by the Board.

A W A R D

Claim held in abeyance pending receipt of further data as described above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1978.