

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement former Carman M. A. Andrade, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly withheld from service from June 25, 1976 when he was recalled from furlough until December 7, 1976 where he was allowed to return to service.
2. That the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, be ordered to compensate the Claimant for all time lost from August 9, 1976, the date that another employee with a 50 pound weight restriction was allowed to return to service, until December 7, 1976 when the claimant was restored to service. Furthermore, that the Claimant be made whole for all fringe benefits that would have been due him during this period had he not been unjustly and capriciously withheld from service.

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, after work related injuries, had been off work on disability. On July 18, 1975 he was cleared for full return to work after examination by a Carrier physician. He was notified that he was on furloughed status and that he was medically cleared to return to work when work was available by letter dated September 2, 1975 from Carrier's Plant Manager.

On June 25, 1976, Claimant was recalled to service based on his seniority (he had twelve years of service). At that time, pursuant to Carrier's policies, since he had not worked for over six months, Claimant was required to report for a physical examination to a Company physician. He reported for such physical and was examined by a Dr. Clancy (previously he had been examined and treated by Dr. McArthur, another Company doctor). According to his unrebutted statement, Dr. Clancy told him verbally that there was nothing out of the ordinary but that his medical records would have to be forwarded for review by Carrier's Chief Surgeon. Subsequently, Claimant was informed by the Plant Manager that the Chief Surgeon had placed a restriction prohibiting him from working any position which required lifting of fifty pounds or more. No reason was given for this restriction. Carrier indicated that there was no light work position available at that time for which Claimant had sufficient seniority. Claimant was then withheld from service.

Claimant contacted Dr. McArthur in an effort to find the reasons for the restriction, but could not find out. After continued pressure, Dr. McArthur arranged for an examination by a Dr. Herzog, which took place on November 3, 1976 and those findings were relayed to Carrier's Chief Surgeon. Subsequently the restriction was removed and Claimant was returned to duty on December 7 1976. The record also indicates that during the time Claimant was withheld from work negotiations were being progressed in settlement of his four personal injury claims against Carrier. Further, the record indicates that subsequent to the restriction being placed on his work, Claimant was denied disability compensation, as being in good health.

The crux of this dispute is whether or not Carrier properly placed a restriction on Claimant's ability to work and the consequences of that action. There is no doubt but that Carrier had the right to require a physical examination of an employe, such as Claimant, who had not worked for a period of over six months. Furthermore, Carrier's right to establish standards of physical fitness is undisputed. However, in this case, there is no evidence whatever in the record to indicate the reason for the disqualification (and restriction). It would appear reasonable for Carrier to have communicated, at minimum, with Claimant telling him why the restriction had been placed on his activities. Not only did Carrier fail to do this, but there is no record whatever of the basis for the decision (see Award 6198). In view of Petitioner's position, and the previous findings that Claimant was fully able to return to work, the burden of establishing a bona fide basis for the restriction was upon Carrier. This burden Carrier did not meet. There is no probative evidence of any finding by the Chief Surgeon to substantiate his medical determination (see Award 6561 among others). In this instance we find that the decision to place a restriction on Claimant was arbitrary and capricious and cannot be supported. The Claim must be sustained.

A W A R D

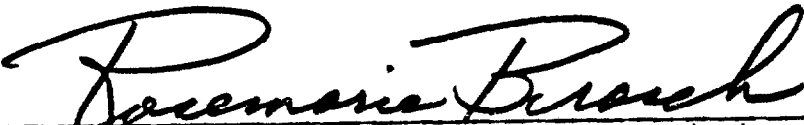
Claim sustained.

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Award No. 7851
Docket No. 7579
2-SPT-CM-'79

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 21st day of February, 1979.