

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That the St. Louis Southwestern Railway Company violated the provisions of the controlling agreement when Carman Freddie Mae Helloms was unjustly suspended from service on September 12, 1979, and that the St. Louis Southwestern Railway Company did not follow the contractual requirements of the controlling agreement in the examination and service disqualification of Freddie Mae Helloms.
2. That the St. Louis Southwestern Railway Company be ordered to restore Carman Freddie Mae Helloms to active service and make whole for all lost benefits including seniority, vacation rights, health and welfare costs, retirement, unemployment and sickness benefits entitlements and all wages that she would have earned as a Carman with the St. Louis Southwestern Railway Company, commencing September 12, 1979.

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 was employed as Carman Apprentice at Carrier's Pine Bluff, Arkansas facilities on April 29, 1974. Claimant was temporarily promoted to Carman in August, 1977. While working as a Car Inspector on August 10, 1977, the Claimant was injured when the three-wheeled motor scooter she was riding, hit a stop sign at a yard crossing. During the period August 10, 1977 to November 14, 1977, Claimant worked as a Car Inspector and Car Welder, welding center plates on box cars. In a letter dated November 14, 1977, Carrier advised Claimant at 9:35 A.M. that it was necessary to remove her from her job due to her inability to perform her duties as instructed by her supervisor. In a letter dated November 15, 1977, Claimant was advised that under the provisions of Rule 41 of the Carmen's Agreement she was being directed to undergo a physical re-examination to determine if she was physically able to properly perform her duties as a freight car welder. Claimant was also advised in said letter that she first could be

examined by a doctor of her choice at her own expense as provided for under the provisions of Rule 41-2(b).

In a letter dated December 27, 1977, Claimant's doctor advised that "*** she was capable of performing light employment or employment which did not require her to be on the involved extremity for prolonged periods." Upon receipt of this information, Carrier's Chief Medical Officer referred Claimant to an orthopedic surgeon. After receipt of the orthopedic surgeon's evaluation the Carrier's Chief Medical Officer released the Claimant to return to work with light duty assignment. Claimant returned to work on January 23, 1978, and worked until July 12, 1978, at which time she went on sick leave. Claimant was on sick leave from July 12, 1978 to September 12, 1979.

On September 12, 1979, Claimant contacted her supervisor about returning to work and at that time presented a letter dated September 12, 1979, from her doctor which stated:

"I believe that Mrs. Freddie M. Helloms has recovered sufficiently to return to her occupational duties and I hereby release her for duty."

Claimant also presented a statement from another doctor, dated September 12, 1979, which stated:

"Physical exam - OK."

In a letter dated September 12, 1979, Claimant was directed to undergo physical re-examination as provided in Rule 41 of the current Agreement. She was directed to report to Dr. Ross E. Maynard for such physical examination on September 19, 1979. Upon receipt of Dr. Ross E. Maynard's medical report, Carrier's Chief Medical Officer directed Claimant to see Orthopedic Surgeon Dr. Frank Reed for further evaluation. In a letter dated October 8, 1979, addressed to Carrier's Chief Medical Officer, Dr. Frank Reed advised:

"***

In my opinion Freddie Helloms admits that she has improved, but not well, she still has no hyperextension in her lower lumbar area; she complains of pain on standing for long periods of time in both the lower back and the knee, and in my opinion she is not physically qualified to return to the duty of a Carman Apprentice."

Carrier's Chief Medical Officer, after reviewing Dr. Maynard's physical examination report and Dr. Frank Reed's orthopedic evaluation, advised the Claimant's supervisor that she was not physically able to be released for duty as Carman Apprentice. Claimant's supervisor in turn notified the Claimant of said findings.

The Organization filed the dispute now before this Board, taking the position that:

"It is the position of the Organization that Rule 41 has not been properly complied with. The report of Dr. E. Frank Reed furnished Helloms is not legible. The report of Dr. Maynard says 'no exceptions'. There is not any evidence whatsoever that Rule 41 was complied with in the selection of the third doctor."

The Board has carefully reviewed this entire matter and finds that Carrier followed the provisions of Rule 41. When Claimant was on sick leave for over one year Rule 41-1(b) gave Carrier the right to have Claimant undergo a physical re-examination before returning to service. When it was called to their attention, Carrier furnished Claimant a legible copy of Dr. E. Frank Reed's report. The Board has reviewed the physical report Dr. Maynard furnished Carrier's Chief Medical Officer. His "no exceptions" covers only that part of the medical report which asked some twenty-two questions that generally require only a yes or no answer pertaining to Claimant's past medical history. Dr. Maynard's actual physical examination is covered by Part II and those findings were passed to Carrier's Chief Medical Officer for his final decision as to whether or not Claimant was qualified to return to service. The Organization takes the position that when Carrier's Chief Medical Officer directed Claimant to Orthopedic Surgeon Dr. Frank Reed for further evaluation the Carrier arbitrarily selected a third doctor and violated Rule 41. The Board has carefully reviewed the entire record and finds that the medical fees for both Dr. Maynard and Dr. Reed were paid by the Carrier and their findings represented a complete medical report submitted to Carrier's Chief Medical Officer for his findings. When the Chief Medical Officer advised Claimant of his decision, it was at this time, if they were not satisfied with the decision, the Claimant or her representative should have made a formal request for a third doctor panel under the provision of Rule 41. This they did not do.

The Board cannot agree with the Organization's contention that the Claimant could not be removed from active service without an investigation under the rules of the Agreement. The Board has held in prior awards that physical disability is not a proper subject for handling under the investigation rule of the Agreement.

The Board, after carefully reviewing the complete record and considering all allegations by both parties, finds that Carrier did not violate Rule 41. Therefore, we will deny the claim.

A W A R D

Claim denied.

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Award No. 8914
Docket No. 9047
2-SLSW-CM-'82

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 February, 1982.