

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

(Brotherhood Railway Carmen of the United States and Canada
(A.F.L. - C.I.O.
Parties to Dispute: (
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(The Western Maryland Railway Company

Dispute: Claim of Employees:

- No.1. That Carrier has violated the contractual rights of Claimant, Carman Herman R. Leigh, when they arbitrarily, discriminatorily, without just cause, withheld Carman Leigh from the service of the Company from the date of August 31, 1979 until the date of December 23, 1979, supposedly on the recommendation of Carrier's Medical Dept.
- No.2. That Carrier be ordered to compensate Carman Leigh for all time and benefits lost account this discriminatory action, beginning with the date of August 31, 1979, to the date of December 23, 1979, at which time Carman Leigh was restored to the service of the Carrier.

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, Carman Herman R. Leigh, asserts that there was no basis for medically disqualifying him effective September 2, 1979, and that Carrier did not take timely steps to restore him to duty, waiting until late December, 1979 when he returned to restricted activity.

As no documentary evidence beyond assertion was submitted by Carrier that on July 2, 1979, Claimant was examined by Carrier's medical department, the contention is that no such examination occurred. While full documentation in a record is clearly preferable, as it serves to narrow the issues early on and thereby enhances the efficiency of the process, the record shows that subsequent to July 2nd, namely, at least twice in August, 1979, Claimant saw his own eye specialist for the apparent purpose of increasing his visual acuity; that the basis of the Carrier's determination to medically disqualify (as asserted) was diminished peripheral vision; and that, to use the words of Claimant's specialist, Claimant was being fitted with "contact lenses which I would expect to improve his field of vision". Thus the record contains sufficient evidence from which to conclude that

well prior to August 31, 1979 (notification of disqualification), Claimant had been made aware that his vision raised a medical question.

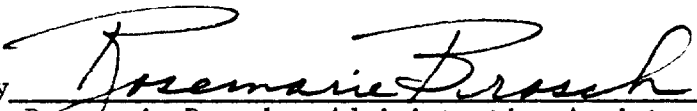
Once Claimant was disqualified it was up to him to come forward with his own physician's opinion in order to obtain a re-evaluation by the Carrier. Although Claimant's visits to his own doctor were in August, there is nothing in the record to explain why he waited until October 10, 1979 to act, and this period of time remains his own responsibility. However, once he submitted his doctor's report on October 10th, it was now up to the Carrier to respond by promptly scheduling an examination within a reasonable time. Numerous awards have established that within five days after a request is generally a reasonable time within which to provide such examination. Here, for reasons which remain unexplained, Claimant was made to wait two months for the next examination by a Carrier physician and still not returned to duty until almost two weeks beyond that. Such a delay is unreasonable and arbitrarily deprives an employee of his fundamental right to an earning opportunity. Therefore, the Board finds that Claimant should have been examined by October 16, 1979, and should be compensated for all time lost between October 16th and the time he returned to work in December, 1979.

A W A R D

Claim sustained to the extent set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.