

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement when they withheld Carman J. T. Maness from service without formal investigation, from August 13, 1981 and are still holding him out of service.
2. That the Missouri Pacific Railroad Company be ordered to:
 - (a) Compensate Carman J. T. Maness for all lost wages starting August 13, 1981 and continuing until violation is corrected.
 - (b) That Carman J. T. Maness be restored to service with seniority rights unimpaired.
 - (c) That Carman J. T. Maness be made whole for all benefits lost that were a condition of his employment at the time he was 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 employes 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.

The Claimant was withheld from service because he failed to submit a report from his psychiatrist which was required by the Carrier's Chief Medical Officer.

Turning to the core of the dispute, the Claimant was not removed from service due to any disciplinary action. Accordingly, the Company did not violate Rule 32(a) which requires that an employe cannot be disciplined without a formal investigation. Mechanical Superintendent E. A. Jones' letter dated November 20, 1981 to the General Chairman does not indicate that discipline was issued against the Claimant. Viewing the letter in its entirety it is an acknowledgement of receipt of the General Chairman's letter concerning the "alleged violation of Rule 32 (a) ***." (Emphasis added). Although Jones then refers to the claim

as a "discipline case", the Board is of the judgment that he is not agreeing to such a characterization of the case; rather Jones is merely confirming the General Chairman's implied view of the case as involving an "alleged violation of Rule 32(a)." Moreover, the Carrier's computer printout showing that the Claimant was dismissed as a result of "discipline action" is merely an error which cannot be given much weight. By contrast, the record supports the conclusion that the Claimant was removed from service because of his failure to furnish a report from his psychiatrist, as required by the Carrier's Chief Medical Officer.

This Board has recognized that the Carrier has the right to establish standards of mental and physical fitness. Indeed, in Award No. 7134, the Board acknowledged the paramount right of a Carrier to establish its health standards which should not be disturbed absent a showing of arbitrary rules or improper application.

The Claimant had voluntarily laid off sick and was undergoing treatment for depression for roughly two (2) months. Upon his return to service in May, 1981, the Claimant was advised that Chief Medical Officer required him to submit a report from his psychiatrist within two (2) months. He was also informed that his failure to submit the report would lead to his removal from service. Thus, the requirement imposed by the Chief Medical Officer, that the Claimant furnish a report from his psychiatrist was not made in bad faith; nor was it arbitrary, capricious or unreasonable. The requirement was not only "based upon reasonable standards", but ultimately upon his concern for the health and safety of the Claimant, "and his fellow employees on the job." Award No. 7535. This is borne out by the fact that the Claimant resumed treatment for his illness in 1982.

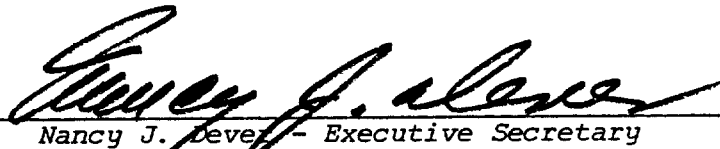
The record warrants the conclusion that the Claimant was withheld from service because he failed to furnish evidence of physical and mental fitness to continue work. Accordingly, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984