

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

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

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company improperly withheld Carman J. E. Donahue from service from May 18, 1981, through July 20, 1981 inclusive, except for ten (10) days when he was compensated for vacation purposes.

2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman J. E. Donahue two hundred and eighty-eight (288) hours at the straight time rate of pay, plus 6% per annum.

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, a Carman, with eleven (11) years service is employed in the Carrier's South Louisville Shops, Louisville, Kentucky.

On May 12, 1981 the Claimant suffered a seizure while on duty and was hospitalized. The Claimant attempted to return to work on May 18, 1981 with a release from his personal physician, Dr. Cundiff, who indicated that he was taking Dilantin and was qualified to return to work. The Carrier's Chief Medical Officer, Dr. Mead, spoke to Dr. Cundiff on June 9, 1981 and advised him that he could not approve the Claimant's return to duty while taking Dilantin. On June 24, 1981, Dr. Cundiff wrote to Dr. Mead advising him that Claimant was still taking Dilantin and was able to return to work. The Claimant then advised the Carrier that he was not taking Dilantin and had not done so for three (3) weeks. As a result Dr. Mead authorized the Claimant's return to work on July 20, 1981. The Claimant was subsequently removed from service by Dr. Mead on October 6, 1981 after receiving reports from three (3) of Claimant's personal physicians, all of whom stated that they had recommended that the Claimant remain on Dilantin.

The Organization filed a claim with the Carrier in which it contends that the Carrier improperly withheld the Claimant from service between May 18, 1981 through July 20, 1981, except for ten (10) days when he was compensated for vacation purposes.

At the outset, it should be noted that Rule 34 which covers the procedure for discipline is not applicable to the instant dispute. Rather, the Claimant was withheld from service from May 18, 1981 through July 20, 1981 for medical reasons.

Turning to the core of the dispute, the Board concludes that the Carrier was not arbitrary and capricious in withholding the Claimant from returning to service because he was taking the medication, Dilantin. Dr. Mead, the Carrier's Chief Medical Officer, did not concur in Dr. Cundiff's recommendation that the Claimant was able to return to work. His reason for doing so was because Dilantin causes drowsiness, inattention and other adverse reactions affecting the central nervous system. Without its use, the Claimant may be subject to recurrent seizures.

Previous awards of this Board recognize "the paramount right of a Carrier to establish its health standards, which should not be disturbed, absent some showing of arbitrary rules or improper application." Second Division Award No. 7134.

To sustain the instant claim would indicate an indifference by the Board to the Carrier's primary responsibility to ensure the safe and efficient operation of its facilities, including the protection of its employees. It would also mean that the Board attributes greater weight to the recommendation of the Claimant's personal physician who does not dispute Dr. Mead's assessment of the effects of Dilantin as opposed to the recommendation of the Carrier's Chief Medical Officer. Suffice it to say that the Board is of the view that the Carrier did not act arbitrarily or unreasonably in withholding the Claimant from service between May 18, 1981 through July 20, 1981.


Finally, having decided the dispute on its merits, the Board does not find it necessary to elaborate on the procedural issues raised by each of the parties.

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