

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

Parties to Dispute: ( International Association of Machinists and  
( and Aerospace Workers, AFL-CIO  
( St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

Claim in behalf of Machinist R. L. Hurt for reinstatement with all negotiated rights unimpaired and compensated for the loss of pay from the date his physician releases him to return to work, which he has been denied due to Carrier arbitrarily dismissing him on August 13, 1982, in violation of the controlling Agreement, in particular Rule 24-1.

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.

As the result of a formal investigation held on July 7, 1982, Claimant was dismissed by Carrier for violation of Rule 810 it being determined Claimant failed to protect his employment. It is the Organization's position that Claimant's dismissal was arbitrary and solely because he was physically unable to work. The Carrier maintains that Claimant was absent from duty without good and sufficient reason as evidenced by a letter from Claimant's physician, and a general release and stipulation for dismissal signed by Claimant on February 5, 1982.

The record shows that Claimant had sustained a personal injury in 1979 during the course of his employment resulting in a personal injury suit against the Carrier. The Carrier has argued strenuously that the "General Release" as a result of this litigation was for time lost, and that Claimant would not have signed the release had he still been injured.

The release does not have the effect sought by the Carrier that Claimant was without physical disability. While it is true that the document provides a release of Carrier from "...any and all liability for all claims for all injuries, including those that may hereafter develop, as well as those now apparent," it cannot be concluded by signing the release Claimant is without physical disability. The fact Claimant signed the release standing alone, lends no support to Carrier's assertion that Claimant failed to protect his assignment because he was a malinger. There is also no evidence to support the Organization's contention that the Carrier knew Claimant was unable to protect his assignment due to his physical condition as the result of the settlement and release.

At issue is the following letter addressed to the Carrier's General Claims Manager from the physician under whose care Claimant was being treated as of January 7, 1982.

"Mr. Hurt returned today and there is some question concerning whether he's been released to return to work. When I last saw him, I said he could go back to work and I will again say that he can go back to work. He may return to work on January 8, 1982 at full duty.

He is also released from my care. We'll see him back on a p.r.n. basis."

The Organization urges this Board to interpret "p.r.n." (an abbreviation for the latin pro re nata defined in Random House Dictionary of the English Lanugage (1973) as "for an unforeseen need or contingency") as an indication Claimant was still ill and the physician expected to see and treat Claimant in the future. The letter only supports Carrier's position that Claimant should have returned to work on January 8, 1982 at full duty.

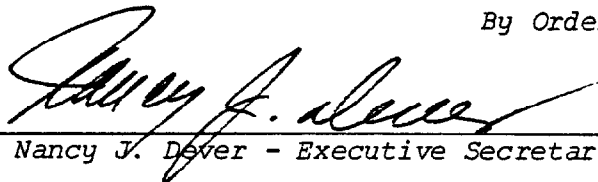
While the record suggests Claimant saw two other physicians in March, 1982 there is no evidence that Carrier was aware Claimant was under treatment by any other physician until more that five months after Claimant was authorized to return to work on January 8, 1982. It is an employee's obligation to make reasonable efforts to protect their employment. Rather than the investigation which resulted in Claimant's dismissal being held before Claimant had time to seek further medical advise, it was held 6 months after Claimant was authorized to return to work. Based upon all the evidence and these findings, the decision of the Board is that Claimant was without proper authority to absent himself from his employment with Carrier from January 8, 1982 to June 14, 1982 as charged.

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 11th day of July, 1984