

The Second Division consisted of the regular members and in addition Referee James R. Cox when award was rendered.

Parties to Dispute: ( International Association of Machinists and Aerospace Workers  
( The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Carrier) improperly withheld Machinist L. J. Johnson, Jr. (hereinafter referred to as Claimant) from Carrier service.
2. That the Carrier be ordered to compensate Claimant for all loss of wages from October 15, 1982, to date of May 19, 1983 with all rights and fringe benefits made whole.

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.

In June, 1982, Claimant L. J. Johnson, Jr. presented the Atchison, Topeka and Santa Fe Railroad Company a release from his physician returning him without restriction to his regular job duties as a Machinist. In October Johnson was advised by the Carrier that he would not be permitted to work. After a December, 1982 Claim filed by the Organization and an April, 1983 Third Party Doctor examination, Claimant was returned to active service May 19, 1983. This Claim seeks reimbursement for lost wages together with contractual rights and fringe benefits from October 15, 1982 through May 19, 1983.

Johnson had two loss of consciousness incidents in 1980. According to his Doctor's June, 1982 report, there were still occasional disturbances during hyperventilation shown on his Electroencephalogram. This Doctor, noting that Johnson had not experienced further incidences of loss of consciousness, concluded that he could return to "full and unrestricted work to include working on mobilized equipment and to include working in elevated equipment". Thereafter, Claimant signed an authorization for release of medical information and, during the next few months, the Carrier received medical information from several physicians who had treated Claimant as well as information from St. John's Hospital pursuant to an additional authorization Claimant completed in September, 1982. The Railroad's "medical director-system", after reviewing the various medical reports, determined that Claimant should be restricted from working on high or moving equipment, work which was an integral part of his job assignment.

The evidence does not show any undue delay in processing the medical evaluation which was caused by the Carrier. There was no evidence of any efforts by Claimant to expedite the process.

Rule 43, requesting a Third Doctor, was not invoked until December 13, 1982. Thereafter, there is also no evidence that the Carrier procrastinated or improperly contributed to any delay in the Third Doctor rendering his opinion.

Carrier had a right to require a medical release prior to releasing Claimant to service following his disability and did not act arbitrarily or unreasonably in rejecting the June recommendation of Claimant's physician considering not only the findings in that report but the serious safety impact of a reoccurrence.

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 March 1985.