Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10928
SECOND DIVISION Docket No. 10784
2-MKT-SMW-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employes:

1. That the Missouri-Kansas-Texas Railroad Company violated the controlling agreement, particularly Rules 26, 17 and 23, Parsons, Kansas, when they arbitrarily withheld Sheet Metal Worker Wayne Autem from service although he offered documentary proof from his physicians that he was able to resume his duties.

2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to compensate Mr. Autem in the amount of eight hours (8) per day, five (5) days per week commencing June 13, 1983, until returned to 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 Organization disputes the Carrier's right to refuse the Claimant's request to return to service in his regular occupation based on his physical condition. Its position, and clearly stated basis for the Claim, is that the Carrier's Supervision, without medical training, took it upon themselves to disqualify the Claimant.

Initially the Organization notes that the Claimant vacated his position account physical illness in 1981 and although not formally released by his physician to return to work, took a return-to-service physical examination on August 25, 1981. He was subsequently notified by the Carrier's Superintendent of Motive Power that he would not be permitted to return to work due to his back problem.

The matter lay dormant until June 2, 1983 when the Claimant contacted the Superintendent and stated he was now able to resume work. He offered two letters addressed to law firm representatives dated February 8 and March 1, 1983. The latter was signed by Dr. William L. Dillon in which it was stated that the patient appears to have a problem with his spine with degenerative disc disease and degenerative arthritis. Dr. Dillon concluded that he saw no reason why the Claimant should not return to his original place of employment. The letter of February 8, signed by Dr. Rae R. Jacobs, Professor of Surgery, Orthopedics, University Surgery Association, Kansas, contained similar views.

The Superintendent told the Claimant he could not return to work.

On July 13, 1983, the Organization initiated the dispute we are to now decide. The Superintendent declined the Claim and in doing so stated:

> "I understand Company Medical Director has reviewed the submitted letters from Mr. Autems Doctor and he was not further processed to return to work."

The Organization's position that the officers under whose jurisdiction the Claimant would work are not trained physicians and, therefore, had no right to inform the Claimant he was physically disqualified does not affect the validity of any notice they gave to him, irrespective of the manner in which it was conveyed. They had the right to do so.

It is an ordinary practice in this industry that the Officers under whose jurisdiction an employe is employed for them to handle matters directly with the employe. In medical matters they do not do so without advice or direction of the Medical Director, the Chief Medical Officer or any other physician authorized to do so.

Moreover, it is a management prerogative for the Chief Medical Officer to review and evaluate the medical opinions of other physicians, including those of the Claimant which in this instance totaled three.

The Carrier's Chief Medical Officer corresponded with the Claimant's principal physician, Dr. Dillon, on August 17, 1983, sent him a job description of a Machinist which the Carrier asserts was identical for all practical purposes to that of a Sheet Metal Worker. Dr. Dillon responded to Dr. Blassingame, the Chief Medical Officer, on September 21, 1983 as follows:

> "In response to the information you sent me on Wayne Autem I have reviewed the material which you have forwarded to me and certainly with Mr. Autem's back condition, I do not think he could do heavy manual labor part of the work outlined in that manual.

> I have also talked to the patient and am a little bit confused about what he actually does. The patient states to me repeatedly that he does not have to do the heavy work listed in the manual. I do not see a reason at this point to not let him try to return to work and to let him see if he can function in the job that he was at prior to his back pain."

An opinion from Dr. Setti S. Rengachary, Veterans Administration, Kansas City, MO dated November 17, 1983, submitted by both parties, reads in pertinent part:

> ". . . Since the stability of spine is not altered to any significance by this operative procedure and since patient's symptoms have essentially cleared, he should be able to resume his previous employment anytime from the date of this letter. He should not lift more than 50 pounds. Otherwise there are no restrictions".

Dr. Blassingame addressed the highest officer designated to handle this dispute during the appeal, reviewed the opinions of the three Doctors and thereupon continued his position that the Claimant was not approved to return to work.

We cannot dispute that he did not have a significant amount of data upon which to decide without personally examining the Claimant but we hasten to add that such determinations are within the purview of management prerogatives unless restricted by provisions of an agreement between the parties. None had been cited by the Organization.

As we have previously held, and we reaffirm here, this Board will not substitute its opinion for the medical expertise of the Carrier's physicians.

Finally, the Organization contends that the Claimant should have been given the same consideration as others who were given preference of light work under Rule 18. The Carrier has asserted that no such positions were available. Moreover, we have no jurisdiction to order the Carrier to create a job for the Claimant in his own craft or any other craft.

As we have held before, we recognize the right of the Carriers' Chief Medical Officers to set and maintain reasonable and necessary medical standards. We find that in this case the Carrier acted within its right when it refused to permit the Claimant to return to service.

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 16th day of July 1986.