

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

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, Rule 17, when they refused to let Carman C. W. Lyons return to work on light duty.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman C. W. Lyons eight (8) hours pay at the straight time rate beginning September 15, 1984 and continuing until he is returned to work.

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 employees involved in this dispute are respectively carrier and employees 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.

Claimant has been employed by the Carrier since 1958. On July 13, 1982, Claimant took a leave of absence due to medical reasons. On September 10, 1984, Claimant's personal physician released Claimant for return to light duty work; Carrier's physician's approved Claimant's return to light duty work on September 19, 1984. Claimant subsequently was advised that no such work was available. The Organization thereafter filed a Claim on Claimant's behalf, charging that Carrier had violated Rule 17 of the Controlling Agreement by refusing to allow Claimant to return to service on light duty status. Rule 17 provides:

"Employees who have given long and faithful service in the employ of the company and who have become unable

to handle heavy work to advantage, will be given preference to such light work in their line as they are able to handle."

The Organization contends that Claimant has given long and faithful service to the Carrier, as set forth in Rule 17. Claimant's seniority allows him to hold jobs that he is physically capable of performing; also, Claimant's physician has specified that Claimant is able to perform the duties required in these jobs. The Organization points out that Carmen who have sustained injuries are working on light duty status throughout the system; Claimant should not be treated differently. The Organization therefore argues that the Claim should be sustained.

Carrier asserts that Rule 17 does not require it to provide light duty work to individuals with medical restrictions when no light duty work is available. Although Claimant may have given Carrier long and faithful service, this does not obligate Carrier to create a position for him. Carrier contends that it does have a policy of providing restricted motion work, but the policy includes two guidelines: there must be work within the individual's craft that is in line with the imposed restrictions, and an individual cannot be placed on permanent light duty status. Carrier's physician determined that Claimant would have to work with medical restrictions for an unspecified time period. Because of the unspecified time period and because no available job met Claimant's restriction on lifting, Carrier could not provide Claimant with work.

Carrier contends that when its physician reexamined Claimant in March, 1985, its physician determined that the lifting restriction should remain in effect. Carrier then informed the Organization that if Claimant's condition improved so that the restriction was lifted, Claimant could be returned to service. Carrier argues that this indicates it is not willfully depriving Claimant of employment. Carrier further asserts that Claimant still is medically disqualified, and there is no indication of when he may be returned to work. Carrier argues that no employer can be expected to provide light duty work, even if it were available, for an indefinite time.

Carrier contends that this Board has held that it is without authority to change health standards, nor will it substitute its own judgment for that of a physician. Carrier argues that it has taken Claimant's long service into account, but no available work meets Claimant's medical restrictions. Carrier asserts that it is not required to create a job for an employee who cannot perform the required duties. Carrier therefore contends that the Claim is without merit and should be denied.

This Board has reviewed the evidence in this case, and we find that the Organization has not met its burden of proof that there was a full-time light-duty position available which the Claimant was physically able to handle and which fulfilled the restrictions set forth by the Claimant's doctor. The decisions of this Board are clear that the Carrier is not obligated to make a job for an employee who cannot perform the required duties of his regular job. (See Second Division Award 8799.) Since the Organization has not pointed to a job which the Claimant could have performed, this Claim must be 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 6th day of January 1988.