

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada  
PARTIES TO DISPUTE: (  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the current controlling agreement, specifically Rule 20, when Carman John L. Maffley was denied the right to return to work after being released by his personal physician.

2. That accordingly, the Baltimore and Ohio Railroad Company be ordered to compensate Carman Maffley for all loss of wages beginning February 16, 1985 and continuing through October 16, 1985.

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 suffered a heart attack on April 15, 1984. He was on sick leave from that time until February 11, 1985 at which time he presented a return-to-work permit from his personal physician. That permit provided for light duty. The Carrier's Chief Medical Officer informed the Division Manager by telegraph on March 26, 1985 that the Claimant was unqualified for duty. The Claimant did not provide a return-to-work statement from his physician without restrictions until September 26, 1985. The Carrier's doctor examined the Claimant on October 3, 1985 and the Claimant returned to work on October 16, 1985.

The Organization claimed a violation of Rule 20 which is reproduced below:

"Employees who have given long and faithful service in the employ of the Company, and who have become unable to perform arduous work, will, seniority permitting, be given preference of such light work in their line (or other duties mutually agreed to with local committee) as they are able to handle. They shall receive the rate of pay of the position to which they are assigned."

The Organization argued the Carrier denied the Claimant's right to return to light duty as provided for in Rule 20. In addition, the Carrier on two occasions denied the Claimant's return without examination. The Organization noted that on August 2, 1985 the Railroad Retirement Board doctor stated that it was alright for the Claimant to return to work. The intent of Rule 20 is to provide employment for long-service employees who cannot perform the normal duties of their job. The Organization admits the Carrier has the right to determine fitness, but it must do so within a reasonable amount of time.

The Carrier argued that the Claimant had been out of service from the end of 1983 and did not provide an acceptable release until September 26, 1985, after which the Carrier's doctor examined the Claimant on October 3, 1985, and he returned to work on October 16, 1985. The Carrier submits that this is not undue delay and, therefore, there is no rule violation.

The Board finds that the Carrier acted in a reasonable manner in accordance with its rights to determine fitness of employees up until the time that it received the complete release of the Claimant on September 26, 1985. The Board finds that Rule 20 was not violated. A reading of the language would indicate that there was no light duty position which was denied to the Claimant and, in any event, because of the seriousness of the Claimant's illness, the Carrier had a right to require a full release prior to returning him to service. The question remaining before the Board is, "Was there an undue delay between the time that the Claimant was released until his return to work?" The Board finds that the unconditional medical release was dated on September 26, 1985, and the Carrier's physician examined the Claimant on October 3, 1985. This seems to be reasonable in light of the events of the case. However, from the examination on October 3rd the Claimant was not allowed to return to work until October 16. There have been many cases before this Division which hold that carriers should return employees to work, under these circumstances, within 5 working days of their final physical examination. Clearly, this did not occur in this case. Therefore, the claim will be sustained in part. The Claimant should have been returned on or before October 11, 1985 and, therefore, should be paid 8 hours at the pro rata rate for all working days between October 11, 1985 and October 16, 1985.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1988.