

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician W. R. Broucher was unjustly treated when he was withheld from service on May 6, 1986, following medical examinations and psychological testing ordered by the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician W. R. Broucher to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

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.

On April 15, 1986, Claimant was instructed to report for a medical examination at the offices of one of Carrier's doctors. The medical doctor that initially examined Claimant recommended that he undergo further clinical and psychodiagnostic evaluation by a doctor specializing in this field. Claimant participated in this examination and evaluation as instructed. On May 6, 1986, he was notified that he was being withheld from service as a result of the findings from this second examination.

Claims were progressed on Claimant's behalf contending that no valid basis existed for the requirement that he be given medical and psychodiagnostic evaluation and that he be returned to service and paid for lost wages.

While this claim was pending Carrier's Chief Medical Officer, on July 6, 1987, cleared Claimant for a return to duty. He was asked to report for the required return to duty physical. When this physical was completed Claimant's immediate supervisor was notified that he was approved for duty with three restrictions:

1. No night work.
2. No working above shoulder level.
3. Need medical update from personal psychologist in 30 days.

Claimant was not returned to work because there were no jobs available at that time that could be accomplished with the restriction on working above shoulder level.

This Board has long held that a Carrier may require an employee to submit to a physical examination, including a psychiatric examination, if it has reasonable cause to believe that this is necessary to determine fitness to continue in service (Third Division Award 13126). On this record we are persuaded that Carrier had a reasonable basis for ordering Claimant to undergo such examinations.

However, there exists a conflict as to Claimant's precise condition and whether the restriction placed upon his return are appropriate. For example, in May, 1987, Claimant submitted to a psychological evaluation by a different psychologist. The report on this evaluation disputes a number of procedures in the evaluation given by Carrier's doctor. Additionally, the private evaluation indicates that a return to work would be healthy for Claimant.

In view of this conflict in medical evidence and the differing opinions as to Claimant's ability to work without restrictions, this Board cannot, at this time, make a determination, now for then, as to Claimant's physical and mental condition. Therefore, in accordance with the holdings of the United States Supreme Court in *Gunther v. San Diego & Arizona Eastern, Ry. Co.*, U. S. 382 SC 257 (1965), and a considerable number of Awards of all Divisions of this Board, we order that a three doctor medical board be convened, within sixty days of the date of this Award, to determine the present physical and mental condition of Claimant as it relates to the ability to perform the duties of his craft.

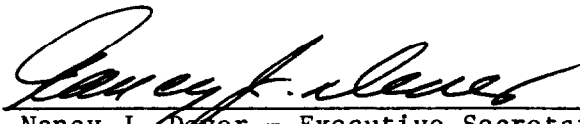
If it is the decision of a majority of this Board that Claimant is fit for duty he shall promptly be returned to service with seniority and other rights unimpaired. Inasmuch as we are unable to determine from this record whether Claimant was wrongfully found physically disqualified on May 6, 1986, we must dismiss the prayer for compensation for the time out of service (Third Division Award 14246).

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 31st day of August 1988.