

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

STATEMENT OF CLAIM:

1. Under the current Agreement, Mechanical Department Electrician Gary D. Hall was unjustly treated when he was denied the right to return to work following the recommendation of Southern Pacific Chief Medical Officer Dr. John E. Meyers on June 28, 1985. Dr. Meyers recommendation stated that Electrician Gary D. Hall was unable to continue in his present occupation, based on recent medical information. Electrician Hall was not granted a formal hearing pursuant to Rule 39 of the controlling Agreement.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to restore Electrician Gary D. Hall to service with all rights unimpaired.

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 June 28, 1985, the Carrier's Production Manager at Sacramento, California, was advised by the Carrier's Chief Medical Officer that because of "recent medical information (the Claimant) is unable to continue in his present occupation and.... may wish to apply for a disability pension at the Office of the Railroad Retirement Board in your area." The record shows also, however, a Return to Duty Status Form signed by the Claimant's personal physician on June 17, 1985, which gave him return to work clearance. In view of this, the Organization advised the Carrier on July 19, 1985, that since the Claimant had not been "apprized (sic) as to the contents of said recent medical information", and since his personal physician released him to return to work in June, the Organization was filing a Claim to restore the Claimant to service with all attendant benefits. In its July 23, 1985, response to the Claim the Carrier states:

"Investigation indicates (Chief Medical Officer) has, based on recent medical evaluations, determined Mr. Hall is incapable of returning to duty. This recent medical information is being forwarded to Mr. Hall's personal physician, and Dr. Meyers' office will notify Mr. Hall of this information transfer. Additional clarification of Mr. Hall's medical status may be obtained by him from his personal physician and from Dr. W. J. Keenan, the Medical Dept. Consultant, based in Sacramento. If desired, Mr. Hall may make an appointment with Dr. Keenan by calling 449-1810."

On July 25, 1985, the Chief Medical Officer wrote the following to the Claimant:

"I have reviewed the results your recent physical examination and psychological evaluation. At this time, I feel that you may wish to apply for a disability pension at the office of the Railroad Retirement Board in your area.

Please send me the name and address of your personal physician. I feel your private physician should have a copy of the two examinations. Your physician can then review the findings and help you with your problems."

On September 17, 1985, the Organization sent an appeal letter to the Carrier Officer with the comment that it did not understand why the Claimant could not return to work since he had been released by his personal physician in June of that year. Subsequent letters were sent to the Carrier's Chief Medical Officer by a physician at the Permanente Medical Groups' Department of Family Practice, Roseville, California, with diagnostic comments on the Claimant's physical condition which concluded that the Claimant was physically healthy and could return to full-time employment. This letter is dated October 2, 1985. On the following day, a letter was forwarded to the same Chief Medical Officer under separate cover by a psychiatrist who had examined the Claimant. This psychiatrist states:

"I am writing this letter on behalf of Mr. Gary Hall who was seen by me for psychiatric evaluation on Sept. 19, 1985 and Oct. 1, 1985. A detailed review of his history and past records reveals a definite pattern of severe depression most of his adult life. He suffers from Major Depression, Recurrent with no psychotic features. In addition, he has underlying Paranoid Personality traits and is a very sensitive person. I strongly believe that when he went through some psychological testing and evaluation (MMPI, etc) in June 1985, that he was severely depressed. He seems to have made a remarkable improvement since then which is perhaps spontaneous even though he claims it is due to spinal manipulation by a chiropractor.

In my opinion, he is in need of ongoing psychiatric treatment with psychotropic medication and psychotherapy. At this time, he is in complete remission from his depression and is able to return to his usual and normal work duty."

There appears to be conflicting medical views, as a matter of record, on the ability of the Claimant to return to regular employment with the Carrier. The Claimant's personal physician and another family practitioner's diagnosis is that the Claimant is able to return to work. Both of these medical opinions, however, as the evidence of record shows, stress the Claimant's physical condition. The opinion of the independent psychiatrist to whom the Claimant went for an examination states that in his opinion the Claimant is in need of "ongoing psychiatric treatment." The opinion of the Carrier's medical consultant is that this treatment is, apparently, of such an important consideration that the Claimant should not be allowed to return to work in his former capacity.

The Board notes, in studying the record, that there is no indication whether the Claimant's personal physician used, in any way, the Carrier's test results when formulating his opinion on the Claimant. There is also no indication that the Claimant went for further consultation or submitted to further examinations with the Carrier's medical consultants. Apparently he thought it sufficient to obtain only other medical opinion on his condition.

This Board is not qualified to conclude that the Carrier's Chief Medical Officer's determination in this case is incorrect on medical grounds even though the record shows that the Claimant is physically healthy. Nor does the Chief Medical Officer, in fact, dispute that. His reasons for disqualifying the Claimant are on psychiatric grounds, which the opinion of an outside psychiatrist was insufficiently persuasive to overturn. On evidentiary grounds alone, it must be concluded that the decision by the Chief Medical Officer on the ability of the Claimant to return to work was neither arbitrary nor capricious. On merits the Claim cannot be sustained.

In the exchange on this case by the parties, the Claim before the Board is sometimes referred to as a disciplinary matter. The Board must conclude that the Claim before it deals, more correctly, with a medical disqualification per se, rather than with discipline (See Second Division Award 11232 for a Board Award on a comparable case).

A W A R D

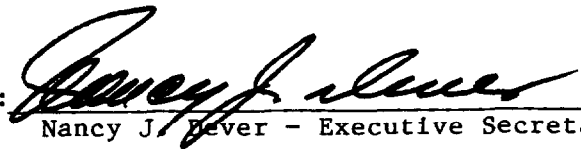
Claim denied.

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Award No. 11612
Docket No. 11305
88-2-86-2-109

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of December 1988.