

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12049
Docket No. 11672
91-2-88-2-181

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

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Pacific Fruit Express Company

STATEMENT OF CLAIM:

1. That the Pacific Fruit Express Company violated the controlling agreement, particularly Rules 19, 20, 21 and 37, when Carman E. D. Darrohn was recalled to service on January 14, 1987, but was not permitted to begin work until March 10, 1987.

2. That accordingly, the Pacific Fruit Express Company be ordered to compensate Carman Darrohn for all work days lost beginning on the date of January 14, 1987 to March 10, 1987, Tucson, Arizona.

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 Claim before us in this Docket is similar in principle to that involved in our Award 11834. On January 20, 1987, Claimant was given a back to work physical. Because Claimant had a history of prior back problems X-rays were taken. When Claimant's medical records were submitted to Carrier's Chief Medical Officer, including X-rays taken in 1984 and 1985, as well as those taken on January 20, 1987, a determination was made that a Radiologist should review the X-rays to determine if there was a progression of the spondylolisthesis.

The Radiology review indicated that Claimant had Grade I spondylo-
listhesis at 5-1. It also showed signs of strain on L5 pars with elongation
and probably sclerosis at the 5-1 facet points.

When this information was made available to Carrier's Chief Medical
Officer a phone consultation, with a follow up letter, was made on March 4,
1987. This activity resulted in Carrier's Medical Officer being advised that
Claimant's back, subsequent to 1984, of progressive sclerosis of the pars with
demonstrated Grade I spondyolsthesis.

Carrier's Medical Director, thus, found it necessary to recommend a
fifty pound lifting limit on Claimant's work related activity, to avoid back
problems. On March 7, 1987, Claimant was authorized to return to work, with
this lifting limitation. He returned on March 10, 1987.

There is nothing in the record before us to remotely suggest that the
conclusion reached concerning Claimant's condition is flawed in any fashion.

As stated in Award 11834 this Board has held many times that a Car-
rier has license to withhold employees from service while it determines if
their physical condition meets acceptable standards. In this case X-rays
indicated that Claimant had a chronic back condition. It was not imprudent
for Carrier's Medical Director to consult with a Radiologist on Claimant's
condition before authorizing his return to duty. Moreover, there is no show-
ing that the consultation and resulting decision therefrom were not conducted
in a timely fashion.

The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Deever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.