

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

(Hile J. Jackson, Jr.

PARTIES TO DISPUTE: ((Norfolk and Western Railway Company

STATEMENT OF CLAIM:

Whether the denial of sick benefits, continued employment, disability benefits and seniority status is the result of the violation of my rights pursuant to the rules of the conditions of employment, that is the Labor-Management agreement and State and Federal Law, that is for discrimination and breach of contract.

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 were given due notice of hearing thereon.

Petitioner was medically disqualified from Carrier's service on April 6, 1971. Eight years later he attempted to return to duty but was not allowed to do so because he continued to experience psychotic episodes and suffer from residual schizophrenia. In 1982 a second attempt to regain his job was made. This, too, was resisted on the basis of a re-evaluation which concluded that he was a poor risk to resume employment.

On June 7, 1990, Petitioner addressed a "To Whom it May Concern" letter to Carrier seeking "payment for both sick leave and disability." Carrier responded to the June 7th letter advising that these matters were subjects which were granted by the Railroad Retirement Board and directed Petitioner to the local Railroad Retirement Board office. Subsequent handling between Petitioner and Carrier continued along the same vein.

Before this Board Petitioner advances a number of contentions, including charges of discrimination, fraud, negligence and breach of contract. Carrier responds that these contentions were not properly handled on the property as required by Section 3, First (1) of the Railway Labor Act and Circular No. 1 of the Board, thus they must be dismissed. Further, Carrier stresses that even if the dispute were properly handled it is invalid on the merits.

There are several reasons why this Board is unable to make an Award favorable to Petitioner. First, the initial "claim" giving rise to the eventual petition to this Board, a request for sick and disability payments, etc., concerns subjects which are under the control of the Railroad Retirement Board. Carrier's initial response to Petitioner's June 7, 1990 letter was correct and should have been followed.

Second, none of the other matters discussed in Petitioner's submission to this Board, as well as the other items brought up at his Hearing, were ever made the subject of a grievance filed and handled on the property, as required by the Railway Labor Act and Circular No. 1, accordingly the must be dismissed.

Third, Petitioner is a medically disqualified employee of Carrier. He has not submitted, indeed has not attempted to submit, any medical evidence that he is capable of returning to work without attendant risk to himself or co-workers.


Petitioner's request must therefore be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.