

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12606  
Docket No. 12507  
93-2-92-2-33

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 Firemen & Oilers  
(  
(CSX Transportation, Inc. (former Baltimore and  
(Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That in violation of the current and controlling agreement, Firemen & Oiler Dwight Pope, ID#523074, was unjustly withheld from service on May 20, 1991 by Carrier's Associate Chief Medical Officer, Thomas G. Cook, M.D.
2. That According, Firemen and Oiler Dwight Pope be compensated eight (8) hours at the straight time rate of pay for each day lost beginning on May 20, 1991 and continuing until this matter was resolved on or about October 13, 1991."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was absent due to an on-duty personal injury between July 12, 1990 and April 19, 1991. In May 1991, his personal physician released him to return to duty. When Claimant attempted to report it was noted that his weight had increased to over 400 pounds. Upon medical re-evaluation of his ability to work as a Laborer, which included duties of climbing on and off locomotives and switching activity, he was disqualified. Claimant commenced a

weight loss program under the direction of his treating physician. On October 9, 1991, after a loss of a significant amount of weight, Carrier's Medical Department approved a conditional return to duty, contingent upon his follow up in the weight reduction program and timely providing Carrier with progress reports. The instant Claim seeks compensation for the time Claimant was out of service between May 20, and October 13, 1991.

In this industry it is well established that a carrier is entitled to withhold employees from service when serious questions are present concerning their medical condition and ability to perform the duties of their jobs. This entitlement includes situations where the involved employee is extremely overweight. In this regard see Public Law Board No. 4698, Award 18 on the property; Public Law Board No. 467, Award 4, as well as Second Division Awards 7535 and 7230 and Fourth Division Award 4431.

This record leaves no doubt that Claimant was seriously overweight when he attempted to return to duty following his recovery from an on-duty injury. Carrier's actions in temporarily withholding him from duty until the condition could be properly evaluated and Claimant commenced a regimen for reduction was not a violation of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 27th day of October 1993.