

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12764
Docket No. 12577
94-2-92-2-105

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

(Brotherhood of Railway Carmen
(Division of TCUI, AFL-CIO
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company (former
(Southern Railway)

STATEMENT OF CLAIM:

"1. That the Norfolk Southern Railway Company violated the terms and conditions of the current agreement, when on August 3, 1991, Carman R.L. Spradlin was informed that he would not be permitted to work due to certain restrictions which were the end result of an-on-the-job injury, which he sustained in 1988.

2. That accordingly, the Norfolk Southern Railway Company, now be ordered to provide the following relief to Carman R. L. Spradlin; pay in the amount of eight (8) hours per day, five (5) days per week, commencing August 3, 1991, until such time as he is returned to service with the Carrier."

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 of hearing thereon.

Claimant suffered an on-duty injury in 1988. Following a partial recovery from this injury, he was given a job in the shop area to accomodate his medical restrictions. In August 1991, a number of jobs in the shop were abolished. The only job Claimant could hold was an outside yard job. When asked if he was able to change hoses and brake shoes, etc., he indicated that he might not be able to do so. He was not allowed to attempt to qualify for an outside job on the basis of these representations. In November 1991, a number of jobs were reestablished in the shop, and Claimant

was reassigned one that would accomodate his medical restrictions. The claim before this Board is seeking compensation for the time Claimant did not work between August and November 1991.

The Board is forced to conclude that the Claim is without merit. It is obvious in this record that Claimant was not able to work between August and November 1991, because of physical limitations on type of work he could be assigned. He was not prevented from working because of discipline. Further, in the circumstances of this case, particularly Claimant's own acknowledgement that he was not capable of working as a Carman in the yard, it was not necessary for Carrier to give him an opportunity to demonstrate his ability to do the work. This would have been an exercise in futility, and is not required in situations where it is obvious that ones physical limitations are disqualifying.

The claim is without merit. It will be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois this 17th day of November 1994.