

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12876
Docket No. 12635
95-2-92-2-158

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division,
(Transportation Communications
(International Union
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Carrier disqualified medically and took Carman H.L. O'Rourke out of service unjustly and held him out of service for 17 working days after he was given a full and complete release from his doctor and the Carrier's Medical Department.
2. That the Carrier make whole Carman O'Rourke for being held out of service unjustly by compensating him seventeen (17) working days which he lost when Carrier pulled him from service after being medically qualified."

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.

It is the Organization's contention that despite the fact that Claimant received a complete release from his doctor and Carrier's Medical Department upon his return from an illness, Carrier removed him from service, causing him to lose seventeen days' pay. Carrier maintains that the information that it was given was inadequate and that it was reasonable to hold Claimant out of service until it was provided with adequate proof of medical qualifications.

Claimant provided Carrier with a letter from his doctor, dated February 15, 1991, which read:

"Mr. Harry O'Rourke was admitted to Memorial Hospital from 11/26 - to 12/2/90, with a diagnosis of cerebrovascular accident and severe uncontrolled hypertension. (See attached discharge summary)

Since then, Mr. O'Rourke has recovered from CVA and his blood pressure is well controlled. He is able to walk a straight line, walk on tip toes and heels and his Romberg's sign is negative. I see no reason why Mr. O'Rourke is unable to work since he has fully recovered."

The letter was received by Carrier on February 19, 1991. According to the Organization, the attached discharge summary contained Claimant's final diagnosis, summary, laboratory and X-ray data, hospital course, disposition and instructions, discharge medications, and condition on discharge. Claimant gave the Medical Department a medical release form that enabled Carrier to obtain all of his medical records. Claimant was medically qualified on February 19.

By certified letter dated February 21, 1991, Carrier's Medical Officer notified Claimant of his medical qualification and advised him to have a follow-up report sent to the Medical Department by March 6, 1991, regarding his diabetic condition. According to Carrier, "This is a standard practice in cases of chronic conditions such as diabetes and heart disease." Claimant returned to service, but did not respond to this letter or to three others sent by Carrier. On July 30, 1991, Claimant was removed from service.

On August 19, 1991, Claimant's physician faxed a copy of a letter dated August 15, 1991, to Carrier:

"Since our last correspondence to you dated February 15, 1991, there has been no change in Mr. O'Rourke's condition. He is able to work and his diabetes is well under control with his current medication of Micronase 1.25 mg. qd.

I hope this letter will help in your decision to allow Mr. O'Rourke to return to work."

Claimant was returned to service on August 23, 1991.

The Organization suggests that Claimant was disciplined for not sending Carrier information that he could not obtain. It points out that Claimant had given Carrier a release form and that the Medical Department could have contacted his doctor. Claimant had provided evidence that he had fully recovered from his cerebrovascular accident and severe uncontrolled hypertension. He was not absent due to a diabetes problem. The earlier release should have been sufficient.

While Carrier's request of February 21, 1991, for information about his diabetic condition followed upon the heels of Claimant's medical requalification for service, the Company was raising a totally separate issue that had nothing to do with the reason for his absence (that is, a vascular/hypertension problem). The real question here is whether, as Carrier alleges, "It is standard procedure to request a follow-up medical examination when an employee has been diagnosed with a serious medical condition (such as diabetes) that requires a status review" and whether Carrier's request in this instance was reasonable. At the same time, there is also a question as to whether it was appropriate for Claimant not to reply to Carrier's directives and to rely on the fact that he had supplied the Medical Department with a medical release form.

This Board does not dispute Carrier's assertion that (a) it has the right to establish standards of mental and physical fitness, (b) it has a responsibility to shield physically unfit employees from conditions that would jeopardize their health and safety, and (c) it has a right to take reasonable measures to make certain that an employee is capable of performing his or her duties. The one problem in the instant case, however, is that the record is devoid of any information about Claimant's diabetic condition, Carrier's procedure for requesting updates, or the reasons why a status review was desirable at this juncture. Review Boards generally defer to Medical Departments on such matters, given the barest suggestion that an update is warranted. Very little would be required of Carrier to satisfy this Board on these points.

Despite this deficiency, there can be no dispute that Claimant had a responsibility to respond to the bona fide directives of Management. It is not accurate to suggest that he could not obtain the requested information, nor was it appropriate for him to assume that it was Carrier's function to secure the information.

Given the facts in this case, the Board concludes that Claimant must share a large portion of the responsibility for what transpired here. At the same time, the problem may have been avoided with further clarification upon Carrier's part. We therefore direct that Claimant's record should reflect the fact that he was withheld from service for ten days. He should be compensated accordingly.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.