

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12899
Docket No. 12703
95-2-92-2-176

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

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(The Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Consolidated Rail Corporation arbitrarily violated Rule 8-J-1 of the May 1, 1979 Controlling Agreement, but not limited thereto, when they refused to return Machinist R. Shaw to service with all rights unimpaired and to pay him for all lost time wages and benefits from and including January 2, 1991 (excluding any compensation received from the Carrier starting on June 17, 1991 through October 15, 1991).
2. That accordingly, Consolidated Rail Corporation be ordered to return Machinist R. Shaw to active service with all rights unimpaired and pay him for all lost time wages and benefits for the period from and including January 2, 1991 (excluding any compensation received from the Carrier starting on June 17, 1991 through October 15, 1991) until he is returned to service.
3. For identification purposes: Carrier's file No. MA-39.)"

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.

On September 2, 1989, the Claimant (who was a Machinist) suffered a stroke because of an aneurysm. Following hospitalization, he was medically approved for work and he returned to the service on November 20, 1990. Because his Supervisors observed that he acted erratically and appeared to be disoriented, the Claimant was removed from his position pending further medical evaluation.

A neuropsychological evaluation of the Claimant was performed on December 19, 1990. The report prepared as a result of this evaluation concluded, among other things, that the Claimant had "significant impairment on several of the most sensitive general indicators of brain damage" and that he should not return to his machinist position. On January 2, 1991, the Carrier disqualified the Claimant.

Following further correspondence involving the Claimant's wife, the Organization and the Carrier, another examination was conducted by a neutral doctor pursuant to Rule 8-J-1 on March 21, 1991. That person found the Claimant fit to return to work. However, he neither saw nor considered the results of the earlier neuropsychological test. Subsequently, a "return from non-occupational disability" physical examination was performed on May 1, 1991. The Carrier's Medical Director found the Claimant not qualified to perform his job on May 9, 1991 based on a finding that the Claimant could not work safely. However, after a follow-up medical examination on June 4, 1991, the Carrier's Medical Director qualified the Claimant with the stipulation: "For retraining and close observation for ability to carry out assigned tasks."

On June 17, 1991, the Claimant returned to work. However, on June 18, the Carrier's Locomotive Shop Superintendent wrote a letter, because three Supervisors reported certain irregularities with respect to the Claimant's behavior. For example, the Superintendent reported that the Claimant had difficulty finding locations, that he could not place recent events in proper time sequence and that he could not remember what he had seen. On the basis of this report, the Carrier's Medical Director disqualified the Claimant from service. (It should be noted here that the Claimant continued to be compensated as if he were working, pending further medical evaluation.)

Subsequently, on July 24, 1991, the Claimant was examined by a neurologist and a neuropsychologist. These two medical specialists confirmed that the Claimant could not work as a Machinist. When a suitable position could not be found for him in consideration of his physical condition, the Claimant was again disqualified and compensated through October 15, 1991.

Under the provisions of Section 503 of the Rehabilitation Act of 1973, the Claimant filed a complaint on February 14, 1992 with the U. S. Department of Labor. That Agency, in a six (6) page decision document rejected the Claimant's complaint.

Following further appeal and correspondence which also served to clarify the earlier medical determination with respect to the requirements for a "structured job" that would be suitable for the Claimant, the matter was appealed to this Division for final resolution.

Concerning the medical qualification issue, the Board has carefully reviewed the voluminous file that has been assembled in this case and on the basis of this review finds that the Carrier has not acted arbitrarily when arriving at its determination that the Claimant was not medically fit to work as a Machinist in a shop environment.

This Board notes that the Carrier has a clear duty and responsibility to maintain a safe workplace. Also, and equally as clearly the Carrier has a duty to itself, the affected employee and to its other employees as well as the public generally to assure that persons in its service are both physically and mentally competent. Moreover, there are legions of awards that have established a basic principle that a determination of medical fitness for service is the sole purview of the Carrier, if based on proper medical information.

In this case, with respect to the medical questions, the Claimant returned to work on November 20, 1990. Subsequently, because of the observations of the Carrier's Supervisors on January 2, 1991, the Claimant was again medically examined and was disqualified on January 2, 1991. A neutral doctor then concluded that the Claimant could return to work. After he did return to work and again after being observed by several Supervisors, the Claimant was again medically disqualified. As noted earlier, further medical examination followed and all medical persons concluded that the Claimant could not perform the duties of a Machinist. While the Organization asserts, in effect, that certain of the Carrier's Supervisors schemed to keep him off the job, there is no evidence to support such an assertion.

Stated simply, every medical examination of the Claimant (with one exception) since 1990 has found him to be unfit for duty. In the one exception, the examination of March 21, 1991, the doctor performing the examination did not have available for review the Claimant's prior evaluation. However, that fact is not particularly relevant because of the subsequent events which occurred after the Claimant returned to work when repeatedly was found to be disqualified.

With respect to the question of compensation, the claim is for eight (8) hours pay at the pro-rata rate commencing on January 2, 1991 and continuing. The record developed on the property provides no basis for this Board to support any part of the monetary claim. No specific part of 8-J-1 has been cited and related to any given period of time. The Organization bears the burden to show that a rule has been violated. It has not met this burden.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.