

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13070
Docket No. 12880
96-2-94-2-25

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

- (1) The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 2-A-3, 3-C-3, 3-C-4, 5-A-1, 6-A-1, 8-H-1 and 8-J-1 when the Carrier removed Machinist J. Flatley from service effective 6-20-91.

RELIEF REQUESTED

- (1) Accordingly, the Claimant is entitled to the payment as requested in the claim submitted in his behalf. Whereas, commencing from June 21, 1991 and continuing to January 5, 1992 Machinist J. Flatley is entitled to all wages lost (including overtime) and any other benefits of employment (vacation rights, health, retirement, unemployment, etc.) that he was deprived of because of his unjust dismissal from service."

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 were given due notice of hearing thereon.

Claimant was a machinist at Carrier's Conway (Pa.) Diesel Terminal. In August, 1988, Claimant went on extended disability leave due to a nonoccupational back injury. In early June, 1991, Claimant was released to work by the doctor who treated him for a psychiatric disorder, as well as by a contract doctor who performed return to work physicals for the Carrier. When Claimant reported for work on June 20, 1991, he was informed that he was not medically qualified to return since neither his June 4 physical nor his own physician's release provided any information on the status of his back condition which had kept him off work for almost 3 years. Claimant was issued a letter from the Carrier's Director-Fitness for Duty requesting comprehensive medical information from the physician(s) who treated his back prior to being released to return to work.

When Claimant failed to furnish the requested information, Carrier scheduled him for a physical examination on September 26, 1991. Claimant cancelled the appointment. Carrier scheduled Claimant for a physical examination on October 2, 1991, and, again he cancelled the appointment. The record reveals that the Carrier ordered the Claimant to appear for a physical examination on December 6, 1991 under threat of disciplinary action. As a result of such examination, a Form MD-40 was issued on December 18, 1991 showing the Claimant medically qualified to report for duty. He did not report to work until January 6, 1992, when he received three days of training and again marked off sick, which is the subject matter of a subsequent claim.

The Organization contends that Claimant was unjustly held out of service for an unnecessary length of time after he had been medically released by a qualified facility utilized by the Carrier for return to work examinations. The claim seeks compensation for the June 20, 1991 to January 6, 1992 period. The Carrier argues that it was appropriate for it to ascertain the nature of Claimant's back condition before allowing him to return to active duty, and that any loss of earnings was due to Claimant's own failure to provide medical information and refusal to submit to scheduled medical examinations.

This Board has held that the Carrier has the clear right and obligation to obtain full medical information concerning employees returning to duty from extended illness or injury. Second Division Award 12940.

Despite the conclusion of the contract physician that the Claimant was fit to return to work on June 4, 1991, there is no evidence that he determined the condition of the Claimant's back or engaged in anything other than a cursory examination of the Claimant. We find nothing in the record to indicate that the determination of Carrier's chief medical examiner that the Claimant was to be kept out of service until he furnished sufficient information concerning the back condition which kept him off work for almost three years was arbitrary or unreasonable. This finding is buttressed by record evidence that the Claimant requested sick benefit forms from a claims clerk in June, 1991, explaining that he "may have an accident or something."

The record also demonstrates that the delay in Claimant's return to work was caused, in large part, but his own failure to provide the requested information and submit to scheduled medical examinations. There is no showing that Carrier delayed in scheduling doctor's appointments once Claimant failed to furnish the requested information on his own, Second Division Award 12670, or that the delay in his returning to work between December 18, 1991 and January 6, 1992 was the fault of the Carrier. Under such circumstances, we find the claim without merit. This finding is based upon the actions of the parties between June, 1991 and January 6, 1992, and not upon the fact that the Claimant subsequently marked off sick on January 10, 1992.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th Day of December 1996.