

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13537

Docket No. 13378

00-2-98-2-66

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

**(Brotherhood Railway Carmen Division  
( Transportation Communications International Union**  
**PARTIES TO DISPUTE: (**  
**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

“Claim of the Committee of the Union that:

- (1) That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 5 when they unjustly withheld from service, Carman Errol Clement, after a return to work release from his personal physician and from the carrier physician.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Errol Clement eight (8) hours pay for each workday he was withheld from service, commencing July 7, 1997 and continuing through and including the time he is returned to active service. Furthermore, he should be made whole for any and all benefits he would have earned during the time he was withheld 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.**

**The Claimant was employed as a Carman and was off work as a result of surgery to his shoulder which was damaged in a prior work-related injury. On June 27, 1997, the Claimant was examined by his personal physician who released him to return to work as of June 30, 1997 with the following two permanent restrictions: (1) no at or above shoulder height lifting/work and (2) no lifting over 25 pounds. The Carrier requested that the Claimant be examined by a Company doctor who agreed with the assessment of the Claimant's physician and found him not medically qualified to work as a Carman.**

**The instant claim, filed on August 26, 1997, alleges a violation by the Carrier of Rule 5.2 dealing with the 40-hour work week guarantee in that the Carrier improperly withheld the Claimant from service during this period of time. The Carrier's response on the property was that the Claimant was found medically unable to perform duties of a Carman due to his physical condition, and thus suffered no loss of earnings between July 1, 1997 and October 1, 1997, the date on which he was granted a permanent disability annuity by the Railroad Retirement Board.**

**A careful review of the record convinces the Board that the issue of compensation presented by this claim is moot. The Claimant applied for a disability annuity from the Railroad Retirement Board. In order to qualify, the Claimant had to certify that he was unable to perform his duties for a 5-month period prior to the application. Since he was granted the disability annuity effective October 1, 1997, the 5-month waiting period is coterminous with the time for which the Organization seeks payment for lost wages. As has been held in Public Law Board No. 5460, Award 1, an employee is estopped from assuming inconsistent and mutually contradictory positions with respect to the same subject matter. Here, by claiming a loss of wages for a period after July 1, 1997, the Claimant has taken a position in conflict with his certification that he was unable to perform services for that period of time. Interpretation 1 to Third Division Award 32036, Serial No. 377, holds that once an employee is certified disabled from service, the Carrier has no liability for lost wages.**

Under the facts of this case, we find that the Claimant is estopped from contending that he lost wages due to the Carrier's withholding him from service for a period of time during which he has certified he was unable to perform services due to medical disability.

**AWARD**

Claim dismissed.

**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 25th day of September, 2000.